A

TREATISE

OF

MONARCHY:

CONTAINING

TWO PARTS.

I. Concerning Monarchy in General.

II. Concerning this Particular Monarchy.

WHEREIN

All the Main Queſtions occurrent in both, are Stated, Diſputed, and Determined.

Done by an earneſt Deſirer of his Countries Peace.

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A TREA-

A TREATISE OF MONARCHY.

PART I. CHAP. 1.

Of Political Government, and its Diſtinction into ſeveral Kinds.

GOvernment and Subjection are Relatives, ſo that what is ſaid of the One, may in proportion be ſaid of the other: Which being ſo, it will be needleſs to treat of both; becauſe it will be eaſie to apply what is ſpoken of one to the other. Government is *Poteſtatis exercitium*, the exerciſe of a Moral Power. One of theſe is the Root and Meaſure of the other; which if it exceed, is exorbitant, is not Government, but a tranſgreſſion of it. This Power and Government is differenced with reſpect to the Governed, to wit, a Family, which is called *Oeconomical*: or a publick ſociety, which is called *Political*, or Magiſtracy. Concerning this Magiſtracy we will treat, 1. In general. 2. Of the principal kind of it. *Sect.* 1.

In

In general concerning Magiſtracy, There are two things about which I find difficulty and difference, ~~viz.~~ the Original, and the End.

Authority, how far from God, how far from men.

Firſt for the Original: There ſeem to be two extreams in Opinion; while ſome amplify the Divinity thereof, others ſpeak ſo ſlightly of it, as if there were little elſe but Humane Inſtitution in it. I will briefly lay down my apprehenſions of the evident truth in this point; and it may be, things being clearly and diſtinctly ſet down, there will be no real ground for contrariety in this matter. Three things herein muſt neceſſarily be diſtinguiſhed, *viz.* 1. The Conſtitution of Power of Magiſtracy in general. 2. The Limitation of it to this or that kind. 3. The Determination of it to this or that individual Perſon or Line.

For the firſt of theſe; 1. It is God's expreſs Ordinance, that in the Societies of Mankind, there ſhould be a Magiſtracy or Government. At firſt when there were but two God ordained it, *Gen.* 3. 16. St. *Paul* affirms as much of the Powers that be, none excepted, *Rom.* 13. 1. 2. This Power whereever placed, ought to be reſpected as a participation of Divine Soveraignty, *Pſal.* 82. 1, 6. and every ſoul ought to be ſubject to it for the *Lord's ſake*, 1 *Pet.* 2. 13. That is, for Conſcience ſake of God's Ordinance, *Rom.* 13. 5. and under penalty of Damnation, *v.* 2. Theſe are Truths againſt which there is no colour of oppoſition. Indeed this Power may be claimed by them who have it not; and where there is a limitation of this Power, ſubjection may be claimed in caſes which are without thoſe limits: But to this Ordinance of Power where it is, and when it requires ſubjection, it muſt be given, as before.

For the ſecond; 1. In ſome particular Communities the Limitation of it to this or that kind, is an immediate Ordinance of God: So Kingly Power was appointed to the Jews, on their deſire, 1 *Sam.* 8. 9. whether they had not a kind of Monarchical Government before, I will not ſtand on it: but it is evident that then, on their earneſt deſire, God himſelf condeſcended to an eſtabliſhment of Regality in that ſtate

ſtate. 2. But for a general binding Ordinance, God hath given no word, either to command or commend one kind above another: Men may according to their Relations to the form they live under, to their affections and judgements in divers reſpects, prefer this or that form above the reſt; but we have no Divine limitation: and it were an abſurdity to think ſo; for then we ſhould uncharitably condemn all the Communities which have not that form, for violation of God's Ordinance, and pronounce thoſe other Powers unlawful. 3. This then muſt have another and lower fountain to flow from, which can be no other than Humane. The higher Power is God's Ordinance: That it reſideth in One, or more; in ſuch or ſuch a way, is from humane deſignment: for when God leaves a matter indifferent, the reſtriction of this indifferency is left to ſecondary cauſes. And I conceive this is Saint *Peter*'s meaning, when he calls Magiſtracy ἀνθρωπίνη κτίσις, Humane Creature; Saint *Paul* calls it, *God's Ordinance*, becauſe the Power is *God's*: Saint *Peter* calls it Humane Ordinance, becauſe the ſpecification of it to this or that form, is from the Societies of Mankind. I confeſs it may be called a Humane Creature, in regard of its ſubject, which is a Man, or Men: or its End, which is to rule over Men for the good of Men; but the other ſeems more natural; and it induces no diſparagement to Authority, being ſo underſtood. But how ever you take that place, yet the thing affirmed ſtands good. that God by no word binds any people to this or that form, till they by their own Act bind themſelves.

For the third: the ſame is to be ſaid of it, as of the ſecond: ſome particular men we find whom God was pleaſed by his own immediate choice to inveſt with this his Ordinance of Authority: *Moſes*, *Saul*, *David*; yea God by his immediate Ordinance determined the Government of that people to *David*'s Poſterity, and made it ſucceſſive; ſo that that People, after his appointment and word was made known to them, and the room void by *Saul*'s death, was as immediately bound by Divine Law to have *David* and his Sons after him to be Magiſtrates, as to Magiſtracy it ſelf. But God hath not done ſo for every people: *a Scriptum eſt* cannot be alledged for the endow-

ing this or that person or stock with Soveraigney over a Community. They alone had the privilege of an extraordinary Word. All others have the ordinary and mediate hand of God to enthrone them. They attain this determination of Authority to their Persons by the tacite and virtual, or else expresse and formal consent of that Society of men they govern, either in their own persons, or the root of their succession, as I doubt not in the sequel it will be made appear. But let no man think that it is any lessening or weakning of God's Ordinance in them, to teach that it is annexed to their Persons by a humane Mean: for though it be not so full a title to come to it by the simple Providence of God, as by the expres Precept of God; yet when by the disposing hand of God's Providence a Right is conveyed to a person or family, by the means of a publick Fundamental Oath, Contract and Agreement of a State, it is equivalent then to a Divine Word; and within the bounds of that publick Agreement, the conveyed Power is as *Obligatory*, as if an immediate word had designed it. Thus it appears that they which say there is *divinum quiddum* in Soveraigns, and that they have their power from God, speak in some sense truth; As also they which say that originally Power is in the People, may in a sound sense be understood. And in these things we have Dr. *Fern*'s consent in his late Discourse upon this Subject. *Sect.* 3.

Sect. 2. *Whether the end of Government be the Peoples good?*

For the end of Magistracy; to set out that, is no hard matter, if we consider what was looked at when God ordained it. That was the Good of the Society of men over which it is set: So Saint *Paul*, *Rom.* 13. 4. ὁτοι εἰς τὸ ἀγαθὸν. God aimed at it in the Institution of Government; and so do all men in the choice of it, where they may be chusers: such a Government, and such persons to sway it, as may most conduce to publick Weal. Also it is the measure of all the Acts of the Governour: and he is good or bad according as he uses his Power to the good of the State wherewith he is intrusted. That is the end: but not the sole end; The preservation of the Power and Honour of the Governour is

is an end too: but I think not co-ordinate, but ſubordinate to the other: becauſe doubtleſs in the Conſtitution of Government, that is firſt thought on, and this in congruity to that; Alſo the reaſon why the Power and Honour of the Magiſtrate muſt be preſerved, is for the publick Societies ſake, becauſe its welfare depends thereon: And if it fall out that one of them muſt ſuffer, every good Magiſtrate will deſcend ſomething from his greatneſs, be it for the good of the Community: On the other ſide, though every ſubject ought for the honour and good of the Magiſtrate to give up his private; yet none ought to advance the Greatneſs of his Soveraign with the publick detriment. Whence, in my apprehenſion, the end of Magiſtracy is the good of the whole Body, Head and Members conjunctly: but if we ſpeak *diviſim*, then the good of the Society is the Ultime end: and next to that, as conducent to that, the Governors Greatneſs and Prerogative. And herein alſo accordeth Dr. *Fern* with us, *Sect.* 3. Where he ſays, That the people are the end of the governing Power. There is another queſtion of mainer concernment here in our general diſcourſe of Authority, fitly to be handled, *viz.* How far ſubjection is due to it? but becauſe it hath a great dependance on the kinds and States of Power, and cannot be ſo well conceived without the Precognition thereof, I will refer it to after opportunities.

Sect. 3. *Diviſion of Magiſtracy.*

For the diviſion of this Power of Magiſtracy. It cannot be well divided into ſeveral ſpecies; for it is one ſimple thing, an indiviſible beam of Divine Perfection; yet for our more diſtinct conceiving thereof, Men have framed ſeveral diſtinctions of it. So with reſpect of its meaſure, it is abſolute or limited: In reſpect of its manner, it is at St. *Peter* divides it, Supreme or Subordinate. In reſpect of its Mean of acquiring, it is Elective, or Succeſſive; for I conceive that of Conqueſt and Preſcription of uſage are reducible to one of theſe, as will appear afterwards. In reſpect of its degrees it is *Nomotherical* or *Architectonical*, and *Gubernative* or *Executive*. And in reſpect of the ſubject of its reſidence, there is an ancient and uſual diſtinction of it into *Monarchical*, *Ariſtocra-*

Stocratical and *Demetratical.* These either simple, or mixt, of two, or all three together, of which the *Predominant* gives the denomination. These are not *accurate specificative* Divisions of Power, for it admits none such, but partitions of it according to divers respects. The course of my intention directs me to speak only of *Monarchical* Power, which is the chief and most usual form of Government in the world: The other two being apt to resolve into this, but this not so apt to dissolve into them.

CHAP. II.

Of the Division of Monarchy into Absolute and Limited.

Sect. 1.

NOW we must know that most of those distinctions which were applied to Power in general, are appliable to Monarchy: because the respects on which they arise are to be found in it. But I will insist on the three main divisions: for the handling of them will bring us to a clear understanding of what is needful to be known about *Monarchical Power.*

First, of the distinction of *Monarchy* into Absolute and Limited. Absolute *Monarchy*, is when the Soveraignty is so fully in one, that it hath no Limits or Bounds under God, but his own Will It is when a people are absolutely resigned up, or resign up themselves to be governed by the will of one man. Such were the ancient *Eastern Monarchies*, and that of the *Persian* and *Turk* at this day, as far as we know. This is a lawful Government, and therefore where men put themselves into this utmost degree of subjection by *Oath* and Contract, or are born and brought unto it by God's Providence, it binds them, and they must abide it, because an *Oath* to a lawful thing is *Obligatory.* This in Scripture is very evident, as *Ezek.* 17. 16, 18, 19. where judgment is denounced against the King of *Judah*, for breaking the Oath made to the

Whether Absolute Monarchy be a lawful Government.

the King of *Babylon*; and it is called God's Oath, yet doubtleſs this was an Oath of abſolute ſubjection. And *Rom.* 13. the Power which then was, was abſolute; yet the Apoſtle not excluding it, calls it *God's Ordinance*, and commands ſubjection to it: So Chriſt commands Tribute to be paid, and pays it himſelf; yet it was an arbitrary Tax, the production of an Abſolute Power. Alſo the Soveraignty of Maſters over Servants was abſolute, and the ſame in Oeconomy as abſolute Monarchy is in Policy; yet the Apoſtle enjoyns not Maſters called to Chriſtianity, to renounce that Title, as too great and rigid to be kept; but exhorts them to moderation in the exerciſe of it; and Servants to remain contented in the condition of their ſervitude. More might be ſaid to legitimate this kind of Government, but it needs not in ſo plain a caſe.

Sect. 2. *Three degrees of abſoluteneſs.*

This Abſolute Monarchy hath three degrees, yet all within the ſtate of Abſoluteneſs. The firſt, when the Monarch, whoſe Will is the peoples Law, doth ſet himſelf no ſtated Rule or Law to Rule by, but by immediate Edicts and Commands of his own Will Governs them, as in his own and Councils judgment he thinks fit. Secondly, When he ſets down a Rule and Law by which he will ordinarily Govern, reſerving to himſelf liberty to vary from it, wherein, and as oft as in his diſcretion he judges fit: and in this the Soveraign is as free as the former, only the people are at a more certainty what he expects from them in ordinary. Thirdly, when he not only ſets down an expreſs Rule and Law to Govern by, but alſo promiſeth and engages himſelf in many caſes not to alter that Rule: But this engagement is an after condeſcent and act of Grace, not diſſolving the abſolute Oath of ſubjection, which went before it, nor is intended to be the rule of his power, but of the exerciſe of it. This Ruler is not ſo abſolute as the former in the uſe of his power, for he hath put a bond on that, which he cannot break without breach of promiſe; that is, without ſin: but he is as abſolute in his power, if he will ſinfully put it forth into act; it hath no politick bounds, for the people ſtill owe him abſolute ſubjection, that not being

being dissolved or lessened by an Act of Grace coming afterwards.

Sect. 3. *Whether resistance be lawful in absolute Monarchy.*

Now in Governments of this nature, How far obedience is due, and whether any resistance be lawful, is a question which here must be decided: For the due effecting whereof, we must premise some needful distinctions to avoid confusion. Obedience is twofold; First, Positive and Active, when in Conscience of an Authority we do the thing Commanded: Secondly, Negative and Passive, when though we answer not Authority by doing, yet we do it by contented undergoing the penalty imposed. Proportionably resistance is twofold: First, Positive, by an opposing of force: Secondly, Negative, when only so much is done as may defend our selves from force, without return of force against the Assailant. Now this negative resistance is also twofold: First, In Inferior and sufferable Cases; Secondly, or in the Supreme Case, and last necessity of Life and Death: and then too, it is first, either of particular person or persons; secondly, or of the whole Community. And if of particular persons, then either under plea and pretence of equity assaulted; or else without any plea at all, meerly for will and pleasure sake: for to that degree of rage and cruelty sometimes the heart of man is given over. All these are very distinguishable Cases, and will be of use either in this or the ensuing disputes.

Assert. 1. To the Question, I say, First, Positive Obedienc is absolutely due to the will and pleasure of an absolute Monarch, in all lawful and indifferent things; because in such a State the Will of the Prince is the supream Law; so that it binds to Obedience in every thing not prohibited by a Superior, that is, Divine Law: for it is in such case the higher power, and is God's Ordinance.

Assert. 2. Secondly, When the Will of an Absolute Monarch commands a thing forbidden to be done by God's Law, then it binds not to active obedience; then is the Apostle's rule undoubtedly true, *It is better to obey God than men*: For the Law of the inferiour gives place to the superiour. In things defined by God, it should be all one with us for the Magistrate to com-

command us to transgress that, as to command us an impossibility; and impossibilities fall under no Law. But on this ground no man must quarrel with Authority, or reject its commands as unlawful, unless there be an open unlawfulness in the face of the act commanded. For if the unlawfulness be hidden in the ground or reason of the action, inferiours must not be curious to enquire into the grounds or reasons of the commands of superiours; for such license of enquiry would often frustrate great undertakings, which much depend on speed and secrecy of execution. I speak all this of absolute Government, where the will and reason of the Monarch is made the higher power, and its expression the supreme Law of a state.

Thirdly, Suppose an Absolute Monarch should so degenerate into Monstrous unnatural Tyranny, as apparently to seek the destruction of the whole Community, subject to him in the lowest degree of vassalage, then such a Community may negatively resist such subversion: yea, and if constrained to it by the last necessity, positively resist, and defend themselves by force against any instruments whatsoever imployed for the effecting thereof. 1. *David* did so in his particular case, when pursued by *Saul*: he made negative resistance by flight, and doubtless he intended positive resistance against any instrument, if the negative would not have served the turn: else why did he so strengthen himself by Forces? Sute not to make positive resistance, and lay violent hands upon the Person of the Lord's Anointed, as it appeared; yet for some reason he did it doubtless, which could be none other, but by that force of Arms to defend himself against the violence of any mis-imployed inferiour hands. If then he might do it for his particular safety, much rather may it be done for the publick. 2. Such an act is without the compass of any the most absolute Potentate, and therefore to resist in it, can be to resist no power, nor the violation of any due of subjection. For, first, the most submiss subjection ever intended by any Community, when they put themselves under another's power, was the command of a reasonable will and power; but to will and command the destruction of the Assert. 3.

the whole body over which a power is placed, were an act of will moſt unreaſonable and ſelf-deſtructive, and ſo not the act of ſuch a will, to which ſubjection was intended by any reaſonable creatures. Secondly, the publick good and being is aimed at in the utmoſt bond of ſubjection; for in the conſtitution of ſuch unlimited ſovereignty, though every particular mans good and being is ſubjected to the will of One ſupream, yet certainly the conſervation of the whole Publick was intended by it; which being invaded, the intent of the Conſtitution is overthrown, and an act is done which can be ſuppoſed to be within the compaſs of no political power; So that did *Nero*, as it was reported of him in his immanity, thirſt for the deſtruction of whole *Rome*; and if he were truly what the Senate pronounced him to be, *Humani generis hoſtis*, then it might juſtifie a negative reſiſtance of his perſon; and a poſitive of any Agent ſhould be ſet on ſo inhuman a ſervice. And the United Provinces are allowed in reſiſting *Philip* 2d. though he had been their abſolute Monarch, if he reſolved the extirpation of the whole people, and the planting the Countrey with *Spaniards*, as it is reported he did. And that aſſertion of ſome, That *All* reſiſtance is againſt the Apoſtle's prohibition. Reſiſtance by power of Arms is utterly unlawful, cannot be juſtified in ſuch a latitude. But of this more will be ſpoken in the current of this diſcourſe.

Aſſert. 4. Fourthly, ſuppoſe by ſuch a power any particular perſon or perſons life be invaded, without any plea of reaſon or cauſe for it, I ſuppoſe it hard to deny him liberty of negative reſiſtance of power; yea, and poſitive, of any Agents, in ſuch aſſault of murther: for though the caſe be not ſo clear as the former, yet it ſeems to me juſtified by the fact of *David*, and the reſcuing of *Jonathan* from the cauſeleſs cruel intent of his Fathers putting him to death. As alſo ſuch an act of will carrying no colour of reaſon with it, cannot be eſteemed the act of a rational will, and ſo no will intended to be the Law of Soveraignty. Not that I think a Monarch of ſuch Abſoluteneſs is bound to yield a reaſon why he commands any man to be put to death, before his command be obeyed; but I conceive the perſon ſo commanded to death

death may be juſtified before God and men for protecting himſelf by eſcape, or otherwiſe, unleſs ſome reaſon or cauſe be made known to him of ſuch command.

Fifthly, Perſons ſubject to an unlimited Dominion muſt without reſiſtance ſubject their Eſtates, Liberties, Perſons, to the will and pleaſure of their Lord, ſo it carry any Plea or ſhew of reaſon and equity. Firſt, it ſeems to me evident, 1 *Pet.* 2. 18, 19, 20. if well doing be miſtaken by the reaſon and judgment of the power for ill doing, and we be puniſhed for it, yet the Magiſtrate going according to his miſguided reaſon, it is the command of a reaſonable will, and ſo to be ſubmitted to, becauſe ſuch a one ſuffers by Law, in a State where the Lord's will is the Law. Secondly, In commands of the power, where is the plea of reaſon and equity on the part of the Commander, whether it be ſuch indeed, ſome power muſt judge, but the conſtitution of abſolute Monarchy reſolves all judgment into the will of the Monarch, as the ſupream Law: ſo that if his will judicially cenſure it juſt, it muſt be yielded to, as if it were juſt without repeal or redreſsment by any created power. And let none complain of this as a hard condition, when they or their Anceſtors have ſubjected themſelves to ſuch a power by Oath or political contract: If it be Gods Ordinance to ſuch, it muſt be ſubjected to, and its exorbitances born, as he ſays in *Tacitus*, as men bear Famine, Peſtilence, and other effects of Gods diſpleaſure. Aſſert. 5.

Sixthly, in abſolute Monarchy the Perſon of the Monarch is above the reach of juſt force and poſitive reſiſtance: for ſuch a full reſignation of mens ſelves to his will and power, by the irrevocable Oath and Bond of political Contract, doth make the perſon as ſacred as the Unction of *Saul* or *David*. In ſuch a State all Lawful Power is below him, ſo that he is uncapable of any Penal hand, which muſt be from a ſuperiour, or it is unjuſt. I have been the longer on this abſolute Monarchy, becauſe though it doth not concern us, yet it will give light to the ſtating of doubts in Governments of a more reſtrained nature: for what is true here in the full ex- Aſſert. 6.

tent of power, is there alſo as true within the compaſs of their power.

Sect. 4. What makes a Monarchy limited?

In moderate or limited Monarchy it is an enquiry of ſome weight to know, *What it is which conſtitutes it in the ſtate of a limited Monarchy.*

Aſſert. 1. Firſt, A Monarchy may be ſtinted in the exerciſe of its power, and yet be an abſolute Monarchy, as appeared before in our diſtinction of abſolute Monarchy: If that bounds be a ſubſequent act, and proceeding from free will and grace in the Monarch; for it is not the exerciſe, but the nature and meaſure of power, wherewith he is radically inveſted, which denominates him a free, or conditionate Monarch.

Aſſert. 2. Secondly, I take it, that a limited Monarch muſt have his bounds of power *ab externo*, not from the free determination of his own will. And now Kings have not divine words and binding Laws to conſtitute them in their Soveraignty, but derive it from ordinary Providence; the ſole mean hereof is the conſent and fundamental contract of a Nation or men, which conſent puts them in their power, which can be no more nor other than is conveyed to them by ſuch contract of ſubjection. This is the root of all Soveraignty individuated and exiſtent in this or that perſon or family; till this come and lift him up he is a private man, not differing in ſtate from the reſt of his Brethren; but then he becomes another man, his perſon is ſacred by that ſoveraignty conveyed to it, which is Gods Ordinance and Image. The truth hereof will be more fully diſcovered, when we come to ſpeak of Elective and Succeſſive Monarchy.

Aſſert. 3. Thirdly, He is then a limited Monarch, who hath a Law beſide his own will for the meaſure of his power. Firſt, the ſupream power of the State muſt be in him, ſo that his power muſt not be limited by any power above his; for then he were not a Monarch, but a ſubordinate Magiſtrate. Secondly, this ſupream power muſt be reſtrained by ſome Law according to which this power was given, and by direction of which this power muſt act; elſe he were not a limited Monarch, that is, a liege Soveraign or legal King. Now a Soveraignty

veraignty comes thus to be legal, or defined to a rule of Law either by original conſtitution, or by after-condeſcent. By original conſtitution, when the Society publick confers on one man a power by limited contract, reſigning themſelves to his government by ſuch a Law, reſerving to themſelves ſuch immunities: In this caſe, they which at firſt had power over themſelves, had power to ſet their own terms of ſubjection; and he which hath no title of Power over them but by their act, can *de jure* have no greater than what is put over to him by that act: By after-condeſcent, *viz.* when a Lord, who by conqueſt or other right, hath an abſolute arbitrary power, but not liking to hold by ſuch a right, doth either formally or virtually deſert it, and take a new legal right, as judging it more ſafe for him to hold by, and deſirable of the People to be governed by. This is equivalent to that by original conſtitution, yea, is all one with it: for this is in that reſpect a ſecondary original conſtitution. But if it be objected, that this being a voluntary condeſcent, is an act of grace, and ſo doth not derogate from his former abſoluteneſs, as was ſaid before of an abſolute Monarch, who confines himſelf to govern by one Rule. I anſwer, This differs eſſentially from that: for there a free Lord of Grace yields to rule by ſuch a Law, reſerving the fulneſs of power, and ſtill requiring of the People a Bond and Oath of utmoſt indefinite ſubjection; ſo that it amounts not to a limitation of radical power: whereas here is a change of title, and a reſolution to be ſubjected to, in no other way than according to ſuch a frame of government; and accordingly no other bond or oath of allegiance is required or taken, then according to ſuch a Law: this amounts to a limitation of radical power. And therefore they ſpeak too generally, who affirm of all acts of grace proceeding from Princes to People, as if they did not limit abſoluteneſs: 'Tis true of acts of grace of that firſt kind, but yet you ſee an act of grace may be ſuch a one as may amount to a reſignation of that abſoluteneſs into a more milder and moderate power, unleſs we ſhould hold it out of the power of an abſolute Lord to be other; or that by free condeſcent, and act of grace, a man can-

not as well part with, or exchange his right and title to a thing, as define himſelf in the uſe and exerciſe, which I think none will affirm.

Sect. 5. In all Governments of this allay and legal Conſtitution, there are three Queſtions of ſpecial moment to be conſidered.

How far Subjection is due in a limited Monarchy. Firſt, How far Subjection is due? As far as they are God's Ordinance, as far as they are a Power, and they are a Power as far as the Contract fundamental, from which under God their authority is derived, doth extend. As abſolute Lords muſt be obeyed as far as their Will enjoins, becauſe their Will is the meaſure of their Power, and their Subjects Law: ſo theſe in the utmoſt extent of the Law of the Land, which is the meaſure of their power, and their Subjects duty of obedience. I ſay ſo far, but I do not ſay no further: for I believe, though on our former grounds it clearly follows, that ſuch Authority tranſcends its bounds if it command beyond the Law; and the Subject legally is not bound to ſubjection in ſuch caſe, yet in Conſcience a Subject is bound to yield to the Magiſtrate, even when he cannot *de jure* challenge obedience, to prevent ſcandal, or any occaſion of ſlighting the power which may ſometimes grow, even upon a juſt refuſal. I ſay, for theſe cauſes a Subject ought not to uſe his liberty, but *morem gerere*, if it be in a thing in which he can poſſibly without ſubverſion, and in which his act may not be made a leading caſe, and ſo bring on a preſcription againſt publick Liberty.

Sect. 6. *How far it is lawful to reſiſt.* Secondly, how far it is lawful to reſiſt the exorbitant illegal Commands of ſuch a Monarch? Poſ. 1. 1. As before in lighter caſes, in which it may be done, for the reaſons alledged, and for the ſake of publick peace, we ought to ſubmit and make no reſiſtance at all, but *de jure recedere*.

Poſ. 2. 2. In caſes of higher nature, paſſive Reſiſtance, *viz.* by appeal to Law, by Concealment, by Flight, is lawful to be made, becauſe ſuch a Command is politically powerleſs, it proceeds not from God's Ordinance in him; and ſo we ſin not

not againſt God's Ordinance in ſuch Non-ſubmiſſion, or Negative reſiſtance.

3. For Inſtruments or Agents in ſuch Commands, if the ſtreight be ſuch, and a man be ſurprized, that no place is left for an Appeal nor Evaſion by Negative reſiſtance, I conceive againſt ſuch Poſitive reſiſtance may be made; becauſe Authority failing, or this Act in the Supreme Power, the Agent or Inſtrument can have none derived to him, and ſo is but in the nature of a private perſon, and his Act as an offer of private violence, and ſo comes under the ſame Rules for oppoſition. Poſ. 3.

4. For the perſon of the Soveraign, I conceive it, as well above any poſitive reſiſtance, as the perſon of an abſolute Monarch; yea, though by the whole Community (except there be an expreſs reſervation of Power in the body of the State, or any deputed Perſons or Court, to uſe (in caſe of intolerable exorbitance, poſitive reſiſtance) which, if there be, then ſuch a Governour is no Monarch, for that fundamental Reſervation deſtroys its being a Monarchy, in as much as the Supreme Power is not in one.) For where-ever there is a Soveraign Politick Power conſtituted, the perſon or perſons who are inveſted with it, are Sacred, and out of the reach of Poſitive Reſiſtance or Violence; which, as I ſaid, if juſt, muſt be from no inferior or ſubordinate hand. But it will be objected, that ſith every Monarch hath his power from the conſent of the whole body, that conſent of the whole Body hath a Power above the Power of the Monarch, and ſo the reſiſtance which is done by it, is not by an inferior power, and to this purpoſe is brought that Axiome, *Quicquid efficit tale eſt magis tale.* I anſwer, That Rule even in natural cauſes is liable to abundance of Reſtrictions; and in the particular in hand it holds not. Where the cauſe doth bereave himſelf of that perfection by which it works, in the very act of cauſing, and convey it to that effect, it doth not remain more ſuch than the effect, but much leſs, and below it; as if I convey an Eſtate of Land to another, it doth not hold that after ſuch Conveyance I have a better Eſtate remaining in me than that other, but rather the Poſ. 4.

contrary

contrary; becauſe what was in one is paſſed to the other. The Servant who at the year of *Jubile* would not go out free, but have his ear boared, and giving his Maſter a full Lordſhip over him: can we argue that he had afterward more power over himſelf than his Maſter, becauſe he gave his Maſter that power over him, by that act of Oeconomical Contract. Thus the Community whoſe Conſent eſtabliſhes a power over them, cannot be ſaid univerſally to have an eminency of power above that which they conſtitute; ſometimes they have, ſometimes they have not: and to judge when they have, when not, reſpect muſt be had to the Original Contract and Fundamental Conſtitution of that State, if they have conſtituted a Monarchy, that is, inveſted one man with a Soveraignty of Power, and ſubjected all the reſt to him; then it were unreaſonable to ſay, they yet have it in themſelves, or have a power of recalling that Supremacy which by Oath and Contract they themſelves transferred on another: unleſs we make this Oath and Contract leſs binding than private ones, diſſoluble at pleaſure, and ſo all Monarchs Tenants at Will from their People. But if they in ſuch Conſtitution reſerve a power in the body to oppoſe and diſplace the Magiſtrate for Exorbitances, and reſerve to themſelves a Tribunal to try him in, that man is not a Monarch, but the Officer and Subſtitute of him or them to whom ſuch power over him is reſerved or conferred. The iſſue is this; if he be a Monarch, he hath the *Apex* or *Culmen Poteſtatis*, and all his Subjects *diviſim* and *conjunctim*, are below him: They have deveſted themſelves of all Superiority, and no power left for a poſitive Oppoſition of the perſon of him whom they have inveſted.

Sect. 7. *Who ſhall be the Judge of the Exceſſes of the Monarch?*

Thirdly, Who ſhall be the Judge of the Exceſſes of the Soveraign Lord in Monarchies of this compoſure? I anſwer: A frame of Government cannot be imagined of that perfection, but that ſome inconveniences there will be poſſible, for which there can be provided no remedy: Many Miſeries to which a people under an abſolute Monarchy are liable, are prevented by this Legal Allay and Definement of Power

Power. But this is expoſed to one defect from which that is free, that is, an impoſſibility of conſtituting a Judge to determine this laſt controverſie, *viz.* the Soveraign's tranſgreſſing his fundamental limits. This Judge muſt be either ſome Foreigner, and then we loſe the freedom of the State, by ſubjecting it to an external power in the greateſt caſe; or elſe within the body. If ſo, then 1. either the Monarch himſelf, and then you deſtroy the frame of the State, and make it abſolute; for to define a Power to a Law, and then to make him Judge of his Deviations from that Law, is to abſolve him from all Law. Or elſe 2. the Community and their Deputies muſt have this power: and then, as before, you put the *apex Poteſtatis*, the *prime ἀρχεῖ* in the whole body, or a part of it, and deſtroy the Being of Monarchy: The Ruler not being Gods immediate Miniſter but of that Power, be it where it will, to which he is accomptable for his actions. So that I conceive, in a limited legal Monarchy, there can be no ſtated internal Judge of the Monarch's actions, if there grow a fundamental Variance betwixt him and the Community. But you will ſay, It is all one way to abſoluteneſs to aſſign him no Judge, as to make him his own Judge *Anſw.* I ſay not ſimply in this caſe there is no Judge: But that there can be no Judge legal and conſtituted within that frame of Government: but it is a tranſcendent caſe beyond the proviſion of that Government, and muſt have an extraordinary Judge, and way of deciſion.

In this great and difficult caſe, I will deliver my appre- Poſ. 1.
henſions freely and clearly, ſubmitting them to the cenſure of better Judgments. Suppoſe the Controverſie to happen in a Government fundamentally Legal, and the People no further ſubjected than to Government by ſuch a Law.

1. If the act in which the exorbitance and tranſgreſſion is ſuppoſed to be, be of leſſer moment, and not ſtriking at the very Being of that Government, it ought to be born by publick patience, rather than to endanger the Being of the State by a contention betwixt the head and body Politick. Poſ. 2.

2. If it be mortal and ſuch as ſuffered, diſſolves the frame and life of the Government and publick Liberty. Then the

illegality and deſtructive nature is to be ſet open, and redreſſment ſought by Petition; which if failing, prevention by reſiſtance ought to be. But firſt, that it is ſuch, muſt be made apparent; and if it be apparent, and an Appeal made *ad conſcientiam generis humani*, eſpecially of thoſe of that Community, then the Fundamental Laws of that Monarchy muſt judge and pronounce the ſentence in every mans conſcience; and every man (as far as concerns him) muſt follow the evidence of Truth in his own ſoul, to oppoſe, or not oppoſe, according as he can in conſcience acquit or condemn the act of carriage of the Governour. For I conceive, in a Caſe which tranſcends the frame and proviſion of the Government they are bound to. People are unbound, and in ſtate as if they had no Government; and the ſuperiour Law of Reaſon and Conſcience muſt be Judge: wherein every one muſt proceed with the utmoſt advice and impartiality. For if he err in Judgment, he either reſiſts Gods Ordinance, or puts his hand to the ſubverſion of the State and Policy he lives in.

And this power of judging argues not a ſuperiority in thoſe who judge, over him who is judged; for it is not Authoritative and Civil, but Moral, reſiding in reaſonable Creatures, and lawful for them to execute, becauſe never deveſted and put off by any act in the conſtitution of a legal Government, but rather the reſervation of it intended: For when they define the Superiour to a Law, and conſtitute no Power to judge of his Exceſſes from that Law, it is evident they reſerve to themſelves, not a Formal Authoritative Power, but a Moral Power, ſuch as they had originally before the Conſtitution of the Government; which muſt needs remain, being not conveyed away in the Conſtitution.

CHAP. III.

Of the Diviſion of Monarchy into Elective and Succeſſive.

THE ſecond diviſion of Monarchy, which I intend to treat of, is that of Elective or Succeſſive. Elective Monarchy is that, whereby the fundamental conſtitution of the State, the Supream Power is conveyed but to the perſon of him whom they take for their Prince; the people reſerving to themſelves power, by men deputed by the ſame conſtitution, to elect a new perſon on the deceaſe of the former. Succeſſive is, whereby the fundamental conſtitution of the State, the Soveraignty is conferred on one Prince; and in that one, as a root and beginning to his heirs, after a form and line of ſucceſſion, conſtituted alſo by the fundamentals of that Government. In the firſt, the peoples oath and contract of ſubjection extends but to one perſon: In the other, to the whole Race and Line of Succeſſors; which continuing, the bond of ſubjection continues; or which failing, the people return to their firſt liberty of chooſing a new perſon, or ſucceſſion to be inveſted with Soveraignty.

Sect. 1. *Elective and Succeſſive Monarchy what they are?*

I do conceive that in the firſt original all Monarchy, yea any individual frame of Government whatſoever, is elective: That is, is conſtituted, and draws its force and right from the conſent and choiſe of that Community over which it ſwayeth. And that triple diſtinction of Monarchy into that which is gotten by Conqueſt, Preſcription, or Choice, is, not of diſtinct parts unleſs by Choice be meant full and formal Choice: my reaſon is, becauſe man being a voluntary agent, and ſubjection being a moral act, it doth eſſentially depend on conſent; ſo that a man may by force and extremity be brought under the power of another, as unreaſonable creatures are, to be diſpoſed of, and trampled

Sect. 2. *All Monarchy whether originally from conſent?*

on, whether they will or no: But a bond of ſubjection cannot be put on him, nor a right to claim Obedience and Service acquired, unleſs a man become bound by ſome act of his own Will. For, ſuppoſe another, from whom I am originally free, be ſtronger than I, and ſo bring me under his mercy, do I therefore ſin if I do not what he commands me? or can that act of violence paſs into a moral title, whithout a moral principle?

Sect. 3. *Monarchy by divine inſtitution.*

But this will be more manifeſt, if by induction I ſhew how other titles reſolve into this. I will begin with that of divine inſtitution. *Saul* and *David* were by the Sacrament of anointing deſigned to the Kingdom, as it were by Gods own hand; which notwithſtanding, they were not actually Kings till the peoples conſent eſtabliſhed them therein: That unction was a manifeſtation of the appointment of God, and when it was made known to the people, I think it had the power of precept, to reſtrain the peoples choice to that perſon; which if they had not done, they had reſiſted Gods ordinance. Yet they were not thereby actually endowed with Kingly power, but remained as private men, till the peoples choice put them in actual poſſeſſion of that power; which in *David* was not till after many Years.

Sect. 4. *Monarchy by preſcription.*

Then for that uſuage or preſcription; if any ſuch did ever conſtitute a Monarchy, it was by vertue of an univerſal conſent by that uſuage and preſcription proved and implied: For in a popular State, where one Man in the Community,, by reaſon of great Eſtate, Wiſdom, or other perfection is in the eye of all the reſt, all reverence him, and his advice they follow; and the reſpect continues from the people to the houſe and family, for divers generations. In this caſe, ſubjection at firſt is arbitrary in the people; and if in time it become neceſſary, it is becauſe their Cuſtom is their Law; and its long continuance is equivalent to a former Election: So that this Tenure and Right, if it be good and more then at pleaſure, as it was at firſt, the conſiderate

conſiderate muſt needs aſcribe it to a conſent, and implicite choice of the people.

Sect. 5. *Monarchy by Conqueſt.*

But the main queſtion is concerning Monarchy atchieved by Conqueſt; where at firſt fight the Right ſeems gotten by the Sword, without the conſent and choice of the people, yea againſt it. Conqueſt is either 1. Total, where a full Conqueſt is made, by a total ſubduing a people to the Will of the Victor: or 2. Partial, where an entrance is made by the Sword: But the people either becauſe of their right claimed by the Invader; or their unwillingneſs to ſuffer the Miſeries of War, or their apparent inability to ſtand out in a way of reſiſtance, or ſome other conſideration, ſubmit to a compoſition and contract of ſubjection to the invader. In this latter it is evident, the Soveraigns Power is from the peoples conſent; and the Government is ſuch as the contract and fundamental agreement makes it to be if it be the firſt agreement, and the pretender hath no former Title which remains in force, for then this latter is invalid, if it include not and amount to a relinquiſhing, and diſanulling of the old. But the difficulty is concerning a full and meer Conqueſt; and of this I will ſpeak my mind clearly. Such a War and Invaſion of a people, which ends in a Conqueſt, 1. it is either upon the pretence or claim of a Title of Soveraingty over the people invaded: and then, if the pretender prevail, it is properly no Conqueſt, but the vindication of a Title by force of Arms. And the Government is not original, but ſuch as the Title is by which he claims it. 2. Or it is by one who hath no challenge of right deſcending to him to juſtifie his claim and invaſion of a people: Then if he ſubdue, he may properly be ſaid to come to his Government by Conqueſt.

Whether Conqueſt give a juſt Title?

And there be who wholly condemn this Title of Conqueſt as unlawful, and take it for nothing elſe but a National and publick robbery; ſo one of the anſwerers to Doctor *Ferne*, ſays in his *p.* 10. *Conqueſt may give ſuch a right as Plunderers uſe to take in houſes they can maſter.——It is inhumane*

to talk of right of Conqueſt in a Civil, in a Chriſtian State. But I cannot allow of ſo indefinite a Cenſure: rather I think the right of Conqueſt is ſuch as the precedent War was; if that were lawful, ſo is the Conqueſt: For a Prince may be invaded, or ſo far injured by a neighbour people, or they may be ſet on ſuch a pernicious enmity againſt him and his people, that the ſafety of himſelf and people may compel to ſuch a War, which War if it end in Conqueſt, who can judge ſuch Title unlawful? Suppoſe then Conqueſt may be a lawful way of acquiſition; yet an immediate cauſe of right of Soverainty; that is, of a Civil power of Government to which obedience is due, it cannot be: I ſay, an immediate cauſe, for a remote impulſive cauſe it oft is, but not an immediate formal cauſe; for that muſt ever be the conſent of the people, whereby they accept of, and reſign up themſelves to a Government, and then their perſons are morally bound, and not before. Thus far the force of Conqueſt may go; it may give a man title over, and power to poſſeſs and diſpoſe of the Country and Goods of the Conquered; yea, the bodies and lives of the Conquered, are at the will and pleaſure of the Conquerour: But it ſtill is at the peoples choice to come into a moral condition of ſubjection, or not. When they are thus at the mercy of the Victor, if to ſave life they conſent to a condition of ſervitude or ſubjection, then that conſent, oath or covenant, which they in that extremity make, being in *re licita* binds them, and they owe moral Duty. But if they would rather ſuffer the utmoſt violence of the Conquerour, and will conſent to no terms of ſubjection, as *Numantia* in *Spain*, and many other people have reſolved; they die or remain a free people. Be they captived or poſſeſſed at pleaſure, they owe no duty, neither do they ſin in not obeying; nor do they reſiſt Gods ordinance, if at any time of advantage they uſe force, to free themſelves from ſuch a violent poſſeſſion: Yea perhaps, if before by contract they were bound to another, they ſhould ſin, if to avoid death or bondage, they ſhould ſwear or covenant ſealty to a Conquerour; and it were more noble and laudable to die in the ſervice, and for the faith to their natu-

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ral Soveraign. Thus I am perſwaded it will appear an uncontroulable truth in policy, that the conſent of the people, either by themſelves or their Anceſtors is the only mean in ordinary providence, by which ſoveraignty is conferred on any perſon or Family: neither can Gods Ordinance be conveyed, and people engaged in Conſcience by any other means.

Sect. 6. *Whether a Monarch by ſucceſſion, may not be limited?*

It hath been affirmed by ſome, that mixture and limitation is inconſiſtent to ſucceſſive Monarchy; as if where ever Soveraignty is entailed to a ſucceſſion, it muſt needs be abſolute: But I muſt profeſs I cannot ſee how it can ſtand with truth: Rather I think, that both Elective and Hereditary Monarchy are indifferently capable of abſoluteneſs, or limitation. If a free, and not pre-engaged people to any Government, by publick compact yield up themſelves to a perſon, to be commanded by his Will as their ſupream Law, during his natural life, and no longer, can it be denied, but that he is an abſolute, and yet Elective Monarch? Unleſs you will ſay, he is not abſolute, becauſe he cannot by his Will, as by a Law, bind them to elect his ſon to ſucceed him, and change their Government into hereditary. But his being limited in this Clauſe doth not diſparage his Soveraignty, or make his power of Government limited, becauſe this belongs not to preſent Government, but is a meer proviſion for the future. Again, if the power of Ruling according to a Law, be by conſent, conveyed to one perſon, and his heirs to ſucceed after him, how this ſhould come to be abſolute, and the entailment ſhould overthrow the conſtitution, I cannot imagine: If the whole latitude of power may be by a people made hereditary, ſure a proportion may as well; unleſs the limitation be ſuch as includes a repugnancy to be perpetual. Indeed this enſtating of a ſucceſſion makes that power irrevocable, during the continuance of that ſucceſſion: but it makes it neither greater nor leſs in the Succeſſor than was in this Progenitors, from whom he derives it.

Sect. 7.

In a ſucceſſive Monarchy, the Succeſſor holds by the ori-

ginal Right of him who is the root of ſucceſſion; and is *de jure* King, the immediate inſtant after his Predeceſſors deceaſe: Alſo the people are bound to him, though they never take any Oath to his perſon. For as he commands in vertue of the original Right, ſo they are bound to obey by vertue of the original Covenant, and National Contract of ſubjection: the new Oath taken either by King or people, is but a reviving of the old: that the Conſcience of it by renewing might be the more freſh and vigorous: it neither gives any new power, nor adds or detracts from the old, unleſs by common agreement an alteration be made; and ſo the foundation in that clauſe is new, which cannot be without the conſent of both parties.

CHAP. IV.

Of the Diviſion of Monarchy *into Simple and Mixed.*

Sect. 1. *Simple and mixed Monarchy, what?*

THe third Diviſion is into Simple and Mixed. Simple, is when the Government abſolute or limited, is ſo intruſted in the hands of one, that all the reſt is by deputation from him, ſo that there is no authority in the whole Body but his, or derived from him: And that one is either individually one perſon, and then it is a ſimple Monarchy: Or one aſſociate Body, choſen either out of the Nobility, whence the Government is called a ſimple Ariſtocracy; or out of the Community, without reſpect of birth or ſtate, which is termed a ſimple Democracy. The ſupream authority reſiding excluſively in one of theſe three, denominates the Goverment ſimple, which ever it be.

Now experience teaching people, that ſeveral inconveniences are in each of theſe, which is avoided by the other: as aptneſs to Tyranny in ſimple Monarchy, aptneſs to deſtructive Factions in an Ariſtocracy, and aptneſs to Confuſion and Tumult in a Democracy. As on the contrary, each of

of them hath ſome good which the others want, *viz.* Unity and ſtrength in a Monarchy; Counſel and Wiſdom in an Ariſtocracy; Liberty and Reſpect of common good in a Democracy. Hence the Wiſdom of men deeply ſeen in State matters guided them to frame a mixture of all three, uniting them into one form, that ſo the good of all might be enjoyed, and the evil of them avoided. And this mixture is either equal, when the higheſt command in a State by the firſt conſtitution of it is equally ſeated in all three; and then (if firm Union can be in a mixture of equality) it can be called by the name of neither of them but by the general ſtile of a *Mixed State:* or if there be priority of Order in one of the three, (as I think there muſt be, or elſe there can be no Unity) it may take the name of that which hath the precedency. But the firmer Union is, where one of the three is predominant, and in that regard gives the denomination to the whole: So we call it a *Mixed Monarchy*, where the primity of ſhare in the Supream Power is in one.

Now I conceive to the conſtituting of mixed Monarchy, (and ſo proportionately it may be ſaid of the other.) Sect. 2. *What it is which conſtitutes a mixed Monarchy?*

1. The Soveraign power muſt be originally in all three, *viz.* If the compoſition be of all three, ſo that one muſt not hold his power from the other, but all equally from the fundamental conſtitution; for if the power of one be original, and the other derivative, it is no mixture, for ſuch a derivation of power to others is in the moſt ſimple Monarchy: Again, the end of mixture could not be obtained; for why is this mixture framed, but that they might confine each other from exorbitance, which cannot be done by a derivate power, it being unnatural that a derived power ſhould turn back, and ſet bounds to its own beginning. Poſ. 1.

2. A full equality muſt not be in the three Eſtates, though they are all ſharers in the Supream power; for if it were ſo, it could not have any ground in it to denominate it a Monarchy, more than an Ariſtocracy or Democracy. Poſ. 2.

3. A power then muſt be ſought wherewith the Monarch muſt be inveſted, which is not ſo great as to deſtroy the mixture; Poſ. 3.

mixture; nor ſo titular as to deſtroy the Monarchy, which I conceive may be in theſe particulars.

1. If he be the Head and Fountain of the power which governs and executes the eſtabliſhed Laws, ſo that both the other States, as well *conjunctim* as *diviſim*, be his ſworn ſubjects, and owe Obedience to his Commands, which are according to eſtabliſhed Laws.

2. If he hath a ſole or chief power in capacitating and putting thoſe perſons or ſocieties in ſuch States and Conditions, as whereunto ſuch ſupream power by the foundations of the Government doth belong, and is annexed; ſo that though the Ariſtocratical and Democratical power which is conjoined to his, be not from him; yet the deſinement and determination of it to ſuch perſons is from him, by a neceſſary conſecution.

3. If the power of convocating or cauſing to be put in exiſtence, and diſſolving ſuch a Court or Meeting of the two other eſtates as is authoritative, be in him.

4. If his authority be the laſt and greateſt, though not the ſole, which muſt eſtabliſh and add a *Conſummation* to every Act. I ſay, theſe or any of theſe put into one perſon, makes that State Monarchical, becauſe the other, though they depend not on him *quoad eſſentiam & actus formales*, but on the prime conſtitution of the Government, yet *quoad exiſtentiam & determinationem ad ſubjecta*, they do.

The ſupream power being either the *Legiſlative*, or the *Gubernative*. In a mixed Monarchy, ſometimes the mixture is the ſeat of the *Legiſlative* power, which is the chief of the two. The power of conſtituting Officers for governing by thoſe Laws being left to the Monarch: Or elſe the Primacy of both theſe powers is jointly in all three: For if the Legiſlative be in one, then the Monarchy is not mixed but ſimple, for that is the ſuperiour, if that be in one, all elſe muſt needs be ſo too: By Legiſlative, I mean the power of making new Laws, if any new be needful to be added to the foundation; and the authentick power of interpreting the old; for I take it, this is a breach of the Legiſlative, and is as great, and in effect the ſame power.

Every

Every mixed Monarchy is limited: but it is not neceſſary that every limited ſhould be mixed: For the Prince in a mixed Monarchy, were there no definement of him to a Law but only this: that his Legiſlative Acts have no validity without the allowance and joint authority of the other; this is enough to denominate it exactly a limited Monarchy: and ſo much it muſt have, if it be mixed. On the other ſide, if in the foundations of his Government he be reſtrained to any Law beſides his own Will, he is a limited Monarch, though that both the Legiſlative and Gubernative Power (provided he exceed not thoſe Laws) be left in his own hands: But then the Government is not mixed. Sect. 3.

Now concerning the extent of the Princes Power, and the Subjects Duty in a mixed Monarchy, almoſt the ſame is to be ſaid, which was before in a limited; for it is a general Rule in this matter: ſuch as the Conſtitution of Government is, ſuch is the Ordinance of God: ſuch as the Ordinance is, ſuch muſt our duty of ſubjection be. No Power can challenge an obedience beyond its own meaſure; for if it might, we ſhould deſtroy all Rules and differences of Government, and make all abſolute and at pleaſure. In every mixed Principality. Sect. 4. *How far the Princes Power extends in a mixed monarchy.*

First, Look what Power is ſolely entruſted and committed to the Prince by the fundamental Conſtitution of the State, in the due execution thereof all owe full ſubjection to him, even the other Eſtates, being but ſocieties of his Subjects bound to him by Oath of Allegiance, as to their liege Lord. Aſſert. 1.

Secondly, Thoſe Acts belonging to the Power which is ſtated in a mixed Principle, if either part of that Principle, or two of the three undertake to do them, it is invalid; it is no binding Act; for in this caſe all three have a free Negative Voice; and take away the priviledge of a Negative Voice, ſo that in caſe of refuſal, the reſt have power to do it without the third, then you deſtroy that third, and make him but a Looker on: So that in every mixed Government, I take it, there Muſt be a neceſſity of concurrence of all three Eſtates Aſſert. 2.

in the production of Acts belonging to that Power, which is committed in common to them: Else ſuppoſe thoſe Acts valid which are done by any *major* part, that is, any two of the three, then you put it in the power of any two by a confederacy at pleaſure to diſanul the third, or ſuſpend all its Acts, and make it a bare Cypher in Government.

Aſſert. 3. Thirdly, in ſuch a compoſed State, if the Monarch invade the power of the other two, or run in any courſe tending to the diſſolving of the conſtituted frame, they ought to employ their power in this caſe to preſerve the State from ruine; yea, that is the very end and fundamental aim in conſtituting all mixed Policies; not that they by croſſing and jarring ſhould hinder the publick good; but that, if one exorbitate the power of reſtraint and providing for the publick ſafety, ſhould be in the reſt; and the power is put into divers hands, that one ſhould counterpoiſe and keep even the other; ſo that for ſuch other Eſtates, it is not only lawful to deny obedience and ſubmiſſion to illegal proceedings, as private men may, but it is their duty, and by the foundations of the Government they are bound to prevent diſſolution of the eſtabliſhed Frame.

Aſſert. 4. Fourthly, the Perſon of the Monarch, even in theſe mixed Forms (as I ſaid before in the limited) ought to be above the reach of violence in his utmoſt exorbitances, For when a People have ſworn Allegiance, and inveſted a Perſon or Line with Supremacy, they have made it ſacred, and no abuſe can diveſt him of that Power, irrevocably communicated. And while he hath power in a mixed Monarchy, he is the Univerſal Soveraign, even of the other limiting States: ſo that being above them, he is *de jure* exempt from any penal hand.

Aſſert. 5. Fifthly, that one Inconvenience muſt neceſſarily be in all mixed Governments, which I ſhewed to be in limited Governments, there can be no Conſtituted, Legal Authoritative Judge of the Fundamental Controverſies ariſing betwixt the three Eſtates. If ſuch do ariſe, it is the fatal diſeaſe of theſe Governments, for which no Salve can be preſcribed; For the eſtabliſhed being of ſuch Authority, would

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ipso facto overthrow the Frame, and turn it into Abſoluteneſs: So that if one of theſe or two, ſay their Power is invaded, and the Government aſſaulted by the other, the Accuſed denying it, it doth become a Controverſie: of this Queſtion there is no Legal Judge. It is a Caſe beyond the poſſible proviſion of ſuch a Government. The Accuſing Side muſt make it evident to every mans Conſcience. In this Caſe, which is beyond the Government, the Appeal muſt be to the Community, as if there were no Government; and as by Evidence Mens Conſciences are convinced, they are bound to give their utmoſt Aſſiſtance. For the intention of the Frame in ſuch States, juſtifies the exerciſe of any Power, conducing to the Safety of the Univerſality and Government eſtabliſhed.

PART II.

Of this Particular

MONARCHY.

CHAP. I.

Whether the Power wherewith our Kings are inveſted, be an Abſolute, or Limited and moderated Power?

Sect. 1. HAving thus far proceeded in general, before we can bring home this to a ſtating of the great controverſie, which now our ſins, God's diſpleaſure, and evil turbulent men have raiſed up in our lately moſt flouriſhing, but now moſt unhappy Kingdom: We muſt firſt look into the Frame and Compoſure of our Monarchy; for till we fully are reſolved of that, we cannot apply the former general Truths, nor on them ground the Reſolution of this ruining Contention.

Concerning the Eſſential Compoſure of this Government, that it is Monarchical, is by none to be queſtioned; but the Enquiry muſt be about the Frame of it. And ſo there are ſeven great Queſtions to be proſecuted.

Queſt. 1. *ſtated.* Firſt, *Whether it be a Limited Monarchy, or Abſolute?* Here the Queſtion is not concerning Power in the Exerciſe, but the Root and Being of it; for none will deny but that the way of Go-

Government uſed, and to be uſed in this Realm, is a deſigned way; only ſome ſpeak as if this Definement were an Act of Grace from the Monarchs themſelves, being pleaſed at the ſuit, and for the good of the People, to let their Power run into act through ſuch a Courſe and Current of Law; whereas, if they at any time ſhall think fit on great cauſes to vary from that way, and uſe the full extent of their Power, none ought to contradict, or refuſe to obey. Neither is it the Queſtion, Whether they ſin againſt God if they abuſe their Power, and run out into Acts of injury at pleaſure, and violate thoſe Laws which they have by Publick Faith and Oath promiſed to obſerve; for none will deny this to be true, even in the moſt abſolute Monarch in the world. But the point controverted is punctually this, *Whether the Authority which is inherent in our Kings be boundleſs and abſolute, or limited and determined, ſo that the acts which they doe, or command to be done without that compaſs and bounds, be not only ſinfull in themſelves, but invalid and non-authoritative to others?*

Now for the determining hereof, I conceive and am in my Judgment perſwaded, That *the Soveraigny of our Kings is radically and fundamentally limited*, and not only in the uſe and exerciſe of it: And am perſwaded ſo on theſe Grounds and Reaſons. Sect. 2. Aſſert.

Firſt, Becauſe the King's Majeſty himſelf, who beſt knows by his Council the nature of his own Power, ſays, That a *the Law is the meaſure of his Power*; which is as full a Conceſſion of the thing as words can expreſs. If it be the meaſure of it, then his Power is limited by it; for the meaſure is the limits and bounds of the thing limited. And in his Anſwer to both Houſes concerning the *Militia*, ſpeaking of the Men named to him, ſays, *If more Power ſhall be thought fit to be granted to them, than by Law is in the Crown it ſelf, His Majeſty holds it reaſonable, that the ſame be by ſome Law firſt veſted in him, with power to transferr it to theſe perſons, &c.* In which paſſage it is granted that the Powers of the Crown are by Law, and that the King hath no more than are veſted in him by Law. Reaſ. 1. a *Declar. from* New-Market, *Mart.* 9. 1641.

Second-

Reaſ. 2. Secondly, Becauſe it is in the very Conſtitution of it mixed, as I ſhall afterwards make it appear, then it is radically limited; for as I ſhewed before, every mixed Monarchy is limited, though not on the contrary: for the neceſſary connexion of other power to it, is one of the greateſt limitations. A ſubordination of Cauſes doth not ever prove the ſupreme Cauſe of limited virtue; a Co-ordination doth always.

Reaſ. 3. Thirdly, I prove it from the ancient, ordinary, and received Denominations; for the King's Majeſty is called our *Liege*, that is, *Legal Soveraign*; and we his *Liege*, that is, his *Legal Subjects*: what do theſe Names argue but that his Soveraignty and our Subjection is legal, that is, reſtrained by Law.

Reaſ. 4. Fourthly, Had we no other Proof, yet that of *Preſcription* were ſufficient: In all ages, beyond record, the Laws and Cuſtoms of the Kingdom have been the Rule of Government: Liberties have been ſtood upon, and Grants thereof, with limitations of Royal Power, made and acknowledged by *Magna Charta*, and other publick and ſolemn Acts; and no Obedience acknowledged to be due, but that which is according to Law, nor claimed, but under ſome pretext or title of Law.

Reaſ. 5. Fifthly, The very Being of our Common and Statute Laws, and our Kings acknowledging themſelves bound to govern by them, doth prove and preſcribe them limited; for thoſe Laws are not of their ſole compoſing, nor were they eſtabliſhed by their ſole Authority, but by the concurrence of the other two Eſtates: ſo that to be confined to that which is not meerly their own, is to be in a limited condition.

Pleaders for defenſive arms Sect. 2 & 4. Some there be which have lately written on this Subject, who take another way to prove our Government limited by Law, *viz.* by denying all abſolute Government to be lawful; affirming, that Abſolute Monarchy is not at all God's Ordinance, and ſo no lawful Power ſecured from reſiſtance. What is their ground for this? God allows no man to rule as he liſt, nor puts mens Lives in the pleaſure of the Monarch.

narch: It is a power arbitrary and injurious. But I desire those Authors to consider, that in absolute Monarchy there is not a resignation of men to any Will or List, but to the *reasonable Will of the Monarch*, which having the Law of Reason to direct it, is kept from injurious acts. But see for defence of this Government, *Part* 1. *Cap.* 2.

Having set down those Reasons on which my Judgment is setled on this side, I will consider the main Reasons whereby some have endeavoured to prove this Government to be of an absolute nature, and will shew their invalidity. Many Divines perhaps inconsiderately, perhaps wittingly for self ends, have been of late years strong Pleaders for *Absoluteness* of Monarchical Power in this Land; and pressed Obedience on the Consciences of People in the utmost extremity, which can be due in the most absolute Monarchy in the World; but I seldom or never heard or read them make any difference of Powers, but usually bring their Proofs from those Scriptures, where subjection is commanded to the *higher Powers*, and all resistance of them forbidden, and from Examples taken out of the manner of the government of *Israel* and *Judah*: as if any were so impious to contradict those truths, and they were not as well obeyed in Limited Government as in Absolute; or as if Examples taken out of one Government do always hold in another, unless their aim were to deny all distinction of Governments, and to hold all absolute, who have any where the supreme power conveyed to them. Sect. 3.

Among these, I wonder most at that late Discourse of Dr. *Ferne*, who in my Judgment avoucheth things inconsistent, and evidently contradictory one to the other: For in his Preface he acknowledges our Obedience to be limited and circumscribed by the Laws of the Land, and accordingly to be yielded or denied to the higher Power; and that *he is as much against an Absolute Power in the King, and to raise him to an Arbitrary way of Government, as against resistance on the Subjects part*: also, *that his power is limited by Law, Sect.* 5. Yet on the other side, he affirms, *That the King holds his Crown by Conquest*; that

that it is *descended to him by three Conquests, Sect.* 2. that even our Senate of Parliament hath not so much plea for resistance as the ancient *Roman* Senate had under the *Roman* Emperors, whose Power we know was absolute, *Sect.* 2. that in Monarchy the judgment of many is reduced to one: that Monarchy settles the chief Power and final Judgment in one, *sect.* 5. What is this but to confess him limited; and yet to maintain him absolute?

Arguments on the contrary dissolved.

But let us come to the Arguments. First, say they, our Kings came to their right by Conquest; yea, says the Doctor, by three Conquests: He means the *Saxons*, *Danes*, and *Normans*, as appears afterwards: Therefore their right is absolute. Here, that they may advance themselves, they care not though it be on the ruine of publick Liberty, by bringing a whole Nation into the condition of conquered Slaves: But to the Argument. 1. Suppose the Antecedent true, the Consequution is not always true; for as it is evident before in the first Part. All Conquest doth not put the Conqueror into an absolute Right. He may come to a right by Conquest; but not sole Conquest, but a partial, occasioning a Right by final Agreement; and then the Right is specificated by that fundamental Agreement: Also he may by the Sword prosecute a claim of another nature; and in his War intend only an acquiring of that claimed Right, and after conquest rest in that: Yea farther, he may win a Kingdom meerly by the Sword, and enter on it by the right of Conquest; yet considering that right of conquest hath too much of force in it to be safe and permanent; he may think conquest the best means of getting a Kingdom, but not of holding, and in wisdom for himself and posterity, gain the affections of the People, by deserting that Title, and taking a new by Politick Agreement, or descend from that Right by fundamental grants of Liberties to the People, and limitations to his own Power: but these things I said in effect before, in the first Part, only here I have recalled them, to shew what a *non sequitur* there is in the Argument. But that which I chiefly intend, is to shew the infirmity or falshood of the Antecedent; it is an Assertion most untrue in it self, and pernicious to the State:

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Our Princes profeſs no other way of coming to the Crown, but by right of ſucceſſion to rule free Subjects in a legal Monarchy. All the little ſhew of Proof theſe Aſſertors have, is from the root of Succeſſion: So *William* commonly called the Conqueror. For that of the *Saxons* was an Expulſion, not a Conqueſt; for, as our Hiſtories record, They coming into the Kingdom, drove out the *Britains*, and by degrees planted themſelves under their Commanders; and no doubt continued the freedom they had in *Germany*; unleſs we ſhould think that by conquering they loſt their own Liberties to the Kings, for whom they conquered and expelled the *Britiſh* into *Wales*. Rather I conceive, the Original of the Subjects Liberty was by thoſe our Fore-fathers brought out of *Germany*: Where, as *Tacitus* reports, *Nec Regibus infinita aut libera poteſtas*: Their Kings had no abſolute but limited Power; and all weighty matters were diſpatched by general Meetings of all the Eſtates. Who ſets not here the Antiquity of our Liberties, and Frame of Government? So they were governed in *Germany*, and ſo here to this day, for by tranſplanting themſelves, they changed their Soyl, not their Manners and Government: Then, that of the *Danes* indeed was a violent Conqueſt; and, as all violent rules, it laſted not long when the *Engliſh* expelled them, they recovered their Countries and Liberties together. Thus it is clear, the *Engliſh* Liberty remained to them till the *Norman* Invaſion, notwithſtanding that *Daniſh* Interruption. Now for Duke *William*, I know nothing they have in him but the bare ſtile of Conqueror, which ſeems to make for them: The very truth is, and every intelligent reader of the Hiſtory of thoſe times will atteſt it, that Duke *William* pretended the grant and gift of King *Edward* who dyed without Children, and he came with forces into this Kingdom, not to Conquer, but make good his Title againſt his Enemies: his end of entring the Land was not to gain a new abſolute Title, but to vindicate the old limited one, whereby the Engliſh *Saxon* Kings his Predeceſſors held this Kingdom. Though his Title was not ſo good as it ſhould be, yet it was better than *Harolds*, who was only the Son of *Goodwyn*, Steward

Tacit. de Moribus German. Sect. 3. & 5.

Camden. Britan. Norma.

Steward of King *Edwards* House; Whereas *William* was Cousin to *Emma*, mother to the said King *Edward*; by whom he was adopted; and by solemn promise of King *Edward* was to succeed him: Of which Promise *Harold* himself became surety, and bound by Oath to see it performed; Here was a fair Title, especially *Edgar Atheling* the right Heir being of tender age, and disaffected by the People. Neither did he proceed to a full Conquest, but after *Harold* who usurped the Crown, was slain in battle, and none to succeed him, the Throne being void, the people chose rather to submit to *William* and his Title, than endure the hazzard of ruining War, by opposing him, to set up a new King: It is not to be imagined, that such a Realm as *England* could be conquered by so few, in such a space, if the peoples voluntary acceptance of him and his Claim had not facilitated and shortned his undertaking. Thus we have it related in Mr. *Camden*, that before *Harold* usurped the Crown, most men thought it the wisest Policie to set the Crown on *Williams* head, that by performing the Oath and Promise, a War might be prevented: And that *Harold* by assuming the Crown, provoked the whole Clergy and Ecclesiastical State against him: and we know how potent in those days the Clergy were in State Affairs: Also that after one battle fought, wherein *Harold* was slain, he went to *London*, was received by the Londoners, and solemnly inaugurated King, as unto whom by his own saying the Kingdom was by Gods Providence appointed, and by vertue of a Gift from his Lord and Cousin King *Edward*, the glorious, granted: so that after that Battle the remainder of the War was dispatched by English Forces and Leaders. But suppose he did come in a Conqueror, yet he did not establish the Kingdom on these Terms, but on the old Laws, which he retained and authorized for himself and his Successors to govern by. Indeed after his settlement in the Kingdom, some *Norman* Customes he brought in, and to gratifie his Soldiers dispossessed many English of their Estates, dealing in it too much like a Conqueror: but the Trial by twelve men, and other Fundamentals of Government, wherein the English Fredom consists, he left untouched,

which

which have remained till this day : On the ſame Title he claimed and was inaugurated, was he King which was a title of rightful ſucceſſion to *Edward:* Therefore he was indeed King not as Conqueror, but as *Edwards* Succeſſor, and on the ſame right as he and his Predeceſſors held the Crown. As alſo by the Grant of the former Laws and form of Government, he did equivalently put himſelf and Succeſſors into the State of Legal Monarchs, and in that Tenure have all the Kings of this Land held the Crown till this day, when theſe Men would rake up and put a Title of Conqueſt upon them, which never was claimed or made uſe of by him who is the firſt Root of their Succeſſion.

Another Reaſon which they produce is the Succeſſive Nature of this Monarchy : For with them, to be Elective and Limited, and to be Succeſſive and Abſolute, are Equipollent : They conceive it impoſſible that a Government ſhould be Hereditary and not abſolute: But I have enough made it appear, *Part* 1. *Chap.* 2. *Sect.* 6. That Succeſſion doth not prove a Monarchy abſolute from Limitation, though it proves it Abſolution from Interruption and Diſcontinuance, during the being of that Succeſſion to which it is defined. And that which they object, That our Kings are actually ſo before they take the Oath of governing by Law, and ſo they would be, did they never take that Oath ; wherefore it is no Limitation of their Royal Power, is there alſo anſwered in the next *Sec.* and that ſo fully, that no more need be ſaid. The ſame Law which gives the King his Crown immediately upon the deceaſe of his Predeceſſor, conveys it to him with the ſame Determinations and Prerogatives annexed, with which his Progenitors enjoyed it, ſo that he entring on that Original right, his Subjects are bound to yield obedience, before they take any Oath : And he is bound to the Laws of the Monarchy, before he actually renews the Bond by any Perſonal Oath. There is yet another Argument uſually brought to this purpoſe, taken from the Oath of Allegiance : But of that I ſhall have occaſion to ſpeak hereafter. *Sect.* 4.

CHAP. II.

Queſt. 2. *Supposing it to be in the Platform limited. Wherein, and how far forth it is limited and defined?*

Poſ. 1. I Conceive it fundamentally limited in Five Particulars. First, in the whole Latitude of the *Nomothetical* Power; ſo that their power extends not to eſtabliſh any Act, which hath the Being and State of a Law of the Land; nor give an authentick ſenſe to any Law of a doubtful and controverted meaning, ſolely and by themſelves, but together with the concurrent Authority of the two other Eſtates in Parliament.

Poſ. 2. Secondly, in the Governing Power, there is a confinement to the Fundamental Common Laws, and to the ſuperſtructive Statute Laws, by the former concurrence of Powers enacted, as to the Rule of all their Acts and Executions.

Poſ. 3. Thirdly, in the power of conſtituting Officers, and means of governing; not in the choice of Perſons, for that is intruſted to his Judgment, for ought I know, but in the conſtitution of Courts of Judicature: For as he cannot Judge by himſelf or Officers, but in Courts of Juſtice; ſo thoſe Courts of Juſtice muſt have a conſtitution by a concurrence of the three Eſtates: They muſt have the ſame power to conſtitute them, as the Laws which are diſpenſed in them.

Poſ. Fourthly, in the very Succeſſion; for though Succeſſion hath been brought as a *medium* to prove the Abſoluteneſs of this Government, yet if it be more throughly conſidered, it is rather a proof of the contrary; and every one who is a ſucceſſive Monarch is ſo far limited in his power, that he cannot leave it to whom he pleaſes, but to whom the Fundamental Law concerning that Succeſſion hath deſigned it. And herein, though our Monarchy be not ſo far limited as that of *France* is ſaid to be, where the King cannot leave it to his

his Daughter, but to his Heir Male, yet reſtrained it is; ſo that ſhould he affect another more, or judge another fitter to ſucceed, yet he cannot pleaſe himſelf in this, but is limited to the next Heir born, not adopted or denominated; which was the caſe 'twixt Queen *Mary* and the Lady *Jane*.

Laſtly, in point of Revenue; wherein their power extend- Poſ. 5.
eth not to their Subjects Eſtates; by Taxes and Impoſitions to make their own what they pleaſe; as hath been acknowledged by *Magna Charta*, and lately by the *Petition of Right*, the caſe of *Ship-money*, *Conduct-money*, &c. Nor, as I conceive, to make an Alienation of any Lands, or other Revenues annexed by Law to the Crown. I meddle not with perſonal limitations, whereby Kings, as well as private Men, may limit themſelves by Promiſe and Covenant, which being particular, bind only themſelves; but of thoſe which are radical, and have continued during the whole current of Succeſſion from unknown times. Other limitations, it is likely, may be produced by thoſe who are skilful in the Laws; but I believe they will be ſuch as are reducible to ſome of theſe, which I take to be the principal and moſt apparent limitations of this Monarchy, and are a moſt convincing induction to prove my Aſſertion in the former Chapter, *That this Monarchy, in the very Mold and Frame of it, is of limited conſtitution.*

CHAP. III.

Whether it be of a Simple or Mixed Conſtitution? Queſt. 3.

WHen the Government is ſimple, when mixed; alſo Sect. 1.
where the mixture muſt be, which denominates a mixed Government, is explained *Part.* 1. *Cap.* 3. Now I conceive it a clear and undoubted Truth, that the Authority of this Land is of a compounded and mixed nature in the very root and conſtitution thereof. And my judgment is eſtabliſhed on theſe grounds.

First,

Reaſ. 1. *Anſw. to the 19 Propoſit.* First, It is acknowledged to be a Monarchy mixed with Ariſtocracy in the Houſe of Peers, and Democracy in the Houſe of Commons. Now (as before was made appear in the firſt Part) it is no mixture which is not in the Root and Supremacy of Power? for though it have a ſubordination of inferior Officers, and though the Powers inferior be ſeated in a mixed Subject, yet that makes it not a mixed Government; for it is compatible to the ſimpleſt in the world, to have ſubordinate mixtures.

Reaſ 2. Secondly, That Monarchy where the Legiſlative Power is in all three, is in the very Root and Eſſence of it compounded and mixed of thoſe three; for that is the height of Power, to which the other parts are ſubſequent and ſubſervient; ſo that where this reſideth in a mixed Subject, that is, in three diſtinct concurrent Eſtates, the conſent and concourſe of all moſt free, and none depending on the will of the other, that Monarchy is in the moſt proper ſenſe and in the very model of it of a mixed conſtitution; but ſuch is the ſtate of this Monarchy, as appears in the former queſtion, and is ſelf-apparent.

Reaſ. 3. Thirdly, That Monarchy, in which three Eſtates are conſtituted, to the end that the Power of one ſhould moderate and reſtrain from exceſs the Power of the other, is mixed in the root and eſſence of it; but ſuch is this, as is confeſſed in the Anſwer to the ſaid Propoſitions. The truth of the *Major* will appear, if we conſider how many ways proviſion may be made in a Political Frame to remedy and reſtrain the exceſſes of Monarchy. I can imagine but three ways. Firſt, By conſtituting a legal power above it, that it may be regulated thereby, as by an over-ruling power: Thus we muſt not conceive of our two Houſes of Parliament, as if they could remedy the exorbitances of the Prince by an Authority ſuperior to his; for this were to ſubordinate him to the two Houſes, to ſet a Superior above the Soveraigu, that is, to deſtroy the Being of his Monarchical Power. Secondly, by an original Conveyance to him of a limited and legal Power, ſo that beyond it he can do no poteſtative Act; yet conſtituting no formal legal Power to refrain or redreſs

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his poſſible exorbitances; here is limitation without mixture of a nother conſtituted power: As the former of theſe overthrows the power of the Sovereign, ſo this makes no proviſion for the indemnity of the people. Thirdly, now the never-enough to be admired wiſdom of the Architects and Contrivers of the frame of Government in this Realm (whoever they were) have found a third way by which they have conſerved the Sovereignty of the Prince; and alſo made an excellent proviſion for the Peoples freedom, by conſtituting two Eſtates of Men, who are for their condition Subjects, and yet have that intereſt in the Government, that they can both moderate and redreſs the exceſſes and illegalities of the Royal Power, which (I ſay) cannot be done but by a mixture, that is, by putting into their hands a power to meddle in acts of the higheſt function of Government; a power not depending on his Will, but radically their own, and ſo ſufficient to moderate the Sovereign's Power.

Now what can reaſonably be ſaid in oppoſition to theſe grounds, proving a fundamental mixture, I cannot deviſe. Neither indeed is a mixture in the Government denied by the greateſt Patrons of Irreſiſtability; only ſuch a mixture they would fain make it, which might have no power of poſitive reſiſtance. I will therefore ſet down what they probably may or do object to this purpoſe, and will ſhew the invadility thereof. Sect. 2.

First, this mixture ſeems not to be of diſtinct Powers, but of a Power and a Council; authority in the Prince to give power to Acts, and counſel in the two Houſes to adviſe and propoſe wholeſom Acts; as if the Royal Power alone did give life to the Law; only he is defined in this Power, that he cannot animate any Act to the being of a Law, but ſuch as is propoſed unto him by this great and Legislative Council of Parliament. *Sol.* This were probable, ſuppoſing the Parliament were only in the nature of a Council; but we know it is alſo a Court, the *High Court of Parliament*: Now it is evident that a Court is the ſeat and ſubject of Authority and Power, *Object.* 1.

power, and not barely of counſel and advice.

Object. 2. Secondly, the two Houſes, together with the King, are the ſupreme Court of the Kingdom; but taken diviſely from the King, it is no Court, and conſequently hath no power. *Sol.* Suppoſe them no entire Court divided from the King, yet they are two Eſtates of the three which make up the ſupreme Court; ſo that they have a power and authority, though not complete and ſufficing to perfect an Act, without the concourſe of the third: For it appears by the Acts of that Court, that every of the three Eſtates hath a Legiſlative power in it; every Act being enacted by the King's moſt excellent Majeſty, and by the *Authority of the Lords and Commons aſſembled in Parliament.*

Sect. 3. *Object.* 3. Thirdly, they have an authority, but in ſubordination to the King, and derived from him, as his Parliament. Indeed this is a main Queſtion, and hath very weighty Arguments on both beſides, *viz. Whether the authority of both the Houſes be a ſubordinate authority, and derived from the King as its original?* Three Reaſons ſeem ſtrong for the affirmative: Firſt, becauſe it is his Parliament, ſo called and acknowledged: If his Court, then the power whereby they are a Court is his power, derived from him, as the power of other Courts is. Secondly, becauſe he hath the power of calling and diſſolving it. Thirdly, becauſe he is acknowledged in the Oaths of Allegiance and Supremacy to be the Head, and of ſupreme authority in the Kingdom, and all ſubject to him.

Whether the authority of the two Houſes be derived from the King?

Treatiſe entituled, A fuller Anſwer to Dr. *Ferne.* And whereas ſome make anſwer, that he is *Singulis major*, but *Univerſis minor*, ſo the Anſwerer to Doctor *Ferne*, I wonder that the Propoſition of the Obſervator, that the King is *Univerſis minor*, ſhould be ſo much exploded. Every Member *ſeorſim* is a Subject, but all *collectim* in their houſes are not: And he ſays ſimply, the Houſes are co-ordinate to the King, not ſubordinate; that the Lords ſtile, *Comites*, or *Peers*, implies in Parliament a co-ordinative ſociety with his Majeſty in the Government. I conceive this Anſwerer to avoid one extreme, falls on another; for this is a very overthrow of all Monarchy, and to reduce all Government

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to Democracy; For look where the *apex poteſtatis* is, there is the Government. Alſo it is againſt Common Reaſon: For the King, is he not King of the Kingdom? and what is the Kingdom but all united? all the particulars knit together in one Body Politick? ſo that if he be King of the Kingdom, he is *Univerſis major* too; for the King is *major*, and the Kingdom is the united Univerſe of the People. Thus thoſe Expreſſions are ſome of them falſe, ſome though *ſecundum quid* true; yet ſpoken ſimply, and in that manner, are ſcandalous and incompatible to Monarchy. Thus you ſee what may be ſaid on the one ſide, to prove the King to be the Original of all Power, even of that which is in the Houſes of Parliament aſſembled.

On the other ſide are as weighty Arguments to prove the contrary, *viz.* That the two Houſes Authority is not dependent, nor derived from the Royal Power. Firſt, the Authority of the Houſes being Legiſlative, is the Supream, and ſo cannot be derived. Three concurrent Powers producing one Supream Act, as Con-cauſe, Joynt Cauſes of the ſame higheſt Effect cannot have a Subordination among themſelves in reſpect of that Caſualty; it not being imaginable how a Power can cauſe the Supream Effect, and yet be a ſubordinate and derived Power. Secondly, The end of conſtituting theſe two Eſtates, being the limiting and preventing the Exceſſes of the third their Power muſt not be totally dependent, and derived from the third, for then it were unſuitable for the end for which it was ordained: For to limit an Agent by a Power Subordinate and depending on himſelf, is all one as to leave him at large without any limitation at all. Thirdly, That which hath been ſpoken of a mixed Monarchy, doth fully prove, that the two other Powers which concur with the Monarch, to conſtitute the mixture, muſt not be altogether ſubordinate to it, and derived from it. I muſt profeſs theſe Reaſons to prevail with me, that I cannot conceive how the Authority of the two Houſes, can in the whole being of it, be a dependent and derived Power.

That we may find out the Truth amidſt this potent Con- Sect. 4.

Resolution of the Question.

contradiction of both sides, recourse must be had to the Architecture of this Government, whereof I must declare my self to be so great an Admirer, that whatever more than Humane Wisdom had the contriving of it, whether done at once, or by degrees found out and perfected. I conceive it unparallell'd for exactness of true Policy in the whole World; such a care for the Sovereignty of the Monarch, such a provision for the Liberty of the People, and that one may be justly allayed, and yet consist without Impeachment of the other, that I wonder how our Fore-fathers in those rude unpolished times, could attain such an accurate composure. First Then suppose a People, either compelled to it by Conquest, or agreeing to it by free consent, Nobles and Commons set over themselves by publick Compact one Sovereign, and resign up themselves to him and his Heirs, to be governed by such and such Fundamental Laws: there's a Supremacy of Power set up, though limited to one course of Exercise. Secondly, Then because in all Governments after Cases will come, requiring an addition of Laws, suppose them covenanting with their Sovereign, that if cause be to constitute any other Laws, he shall not by his sole Power do that work, but they reserve at first, or afterwards it is granted them (which is all one) a hand of concurrence therein, that they will be bound by no Laws, but what they joyn with him in the making of. Thirdly, Because though the Nobles may personally conven, yet the Commons (being so many) cannot well come together by themselves to the doing of such a Work, it be also agreed, that every Corporation of the Commons shall have power to depute one or more to be for the whole in this publick Legislative Business; that so the Nobles by themselves, the Commons by their Deputies assembling, there may be representatively the whole Body, having Commission to execute that reserved Authority for establishing new Laws. Fourthly, Because the occasion and need of making new Laws, and authentick expounding the old, would not be constant and perpetual, and it would carry an appearance of a Government in which were three Heads and chief Powers, they did not stabilish these Estates

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to be constantly existent, but occasionally, as the Causes for which they were ordained, should emerge and happen to be. Fifthly, because a Monarchy was intended, and therefore a Supremacy of Power (as far as possible) must be reserved for one, it was concluded that these two Estates should be Assemblies of his Subjects sworn to him, and all former Laws; the new, which by agreement of Powers should be enacted, were to be his Laws, and they bound to obey him in them as soon as established: And being supposed that he who was to govern by the Laws, and for the furtherance of whose Government the new Laws were to be made, should best understand when there was need, and the assembling and dissolving the two Estates meeting, was a Power of great Priviledge, it was put into the Princes hand by Writ, to convocate and bring to Existence, and to adjourn and dismiss such Meetings. Sixthly, In process of time Princes not caring much to have their Government looked into, or to have any Power in act but their own, took advantage of this Power of convocating these Estates, and did more seldom than need required, make use of it; whereon Provision was made, and a time set, within which an Assembly of Parliament was to be had. Now when you have made these Suppositions in your mind, you have the very Model and Platform of this Monarchy, and we shall easily find what to answer to the Arguments before produced on either side. For first it is his Parliament, because an Assembly of his Subjects, convocated by his Writ, to be his Council, to assist him in making Laws for him to govern by: yet not his, as other Courts are altogether deriving their whole Authority from the fullness which is in him. Also his Power of Assembling and Dissolving, proves him thus far above them, because in their Existence they depend on him; but their Power and Authority, *quoad specificationem*, the being and kind of it, is from Original Constitution: for they expect no Commission and Authority from him, more than for their meeting and reducing into Existence; but existing they work according to the Priviledges of their Constitution, their acts proceeding from their conjunct Authority with the Kings, not from

its Subordination to the Kings. The Oath of Allegiance binds them, and respects them as his Subjects, to obey him, governing according to established Laws: it supposes and is built upon the Foundations of this Government, and must not be interpreted to overthrow them; he is thereby acknowledged to be Supream; so far as to rule them by Laws already made, not so far as to make Laws without them, so that it is no Derogation to their Power; and I believe of these things none can make any question. Therein consists the accurate Judgment of the Contrivers of this Form, they have given so much into the hands of the Sovereign, as to make him truly a Monarch; and they have reserved so much in the hands of the two Estates, as to enable them to preserve their own Liberty.

CHAP. IV.

Quest. 4. ***How far forth it is mixed, and what parts of the Power are referred to a mixed Principle?***

I Shall be the briefer in this, because an answer to it may be easily collected out of the precedent Questions: for he who knows how far this Government is limitted, will soon discern how far it is mixed, for the Limitation is most-ly affected by the mixture: but distinctly, I conceive that there are three parts of the Power referred to the joynt concourse of all three Estates: So that either of them not consenting or suspending its Influence, the rest cannot reduce that Power ordinarily and legally into act.

Three Points of mixture.

1. The first is the Nomothetical Power, understanding by it the power of making, and authentick expounding Laws, so that I believe an Act cannot have the Nature and Form of a Law of the Land, if it proceed from any one or two of these, without the positive concurrence of the third.

2. Secondly, The power of Imposing Taxes and Payments on Mens Estates; that the King, by himself, cannot assume Mens Properties

Properties, by requiring Impoſitions not granted him by Law, is often confeſſed: And that the other Eſtates cannot do it by themſelves, I conceive it as unqueſtionable: For it were ſtrange to give that to the Secundary and aſſiſting Powers, which is denied to the Sovereign and Principal. If it be objected that every Corporation electing Deputies, and authorizing them to be *vice totius communitatis*, do thereby grant them power, and entruſt them as to make Laws to bind them ſo to diſpoſe of any part of their Eſtate, either by Rate or Payment for the Publick Good: I anſwer, that they are by that Deputation enabled as for one, ſo for the other; that is, according to the Fundamental Uſage of the Kingdom; that is by the joynt conſent of the other Eſtates, for though the Houſe of Commons is choſen by the People, and they repreſent the People, yet the Repreſentation doth not give them a power which was not in the People. Now the People have no power to do an act which either directly, or by conſequence doth put it in the will and pleaſure of any one or two of the Eſtates, to overthrow the other: But this power of opening and ſhutting the Purſe of the Kingdom, is ſuch a Power, that if it be in one or two of the Eſtates, without the third, then they by that power might neceſſitate that other to do any act, or diſable it from its own defence. This and the Legiſlative power hath ſuch a nearneſs, that they cannot be divided, but muſt be in the ſame ſubject: This is ſo great a power, that put it abſolutely in any Eſtate ſingle, you make that Eſtate in effect Abſolute, making the reſt dependent and beholding to it for their ſubſiſtence.

Thirdly, The power of diſpatching the Affairs of the Kingdom, which are of greateſt Difficulty and Weight, the *Ardua Regni*, which the Writ for convocating the other Eſtates doth mention, ſuppoſing thereby that ſuch difficulties are not to be diſpatch'd by the power of one alone; for if they were, why then are the two other convocated to be aſſiſting? I acknowledge many matters of great moment may be done by the Regal Power, and in ſuch caſe it may be ſaid, that the other Eſtates are gathered *ad melius tranſigendum*, that the advice and ſenſe of the Community may be for direction. 3.

ction. But I conceive there be two ſorts of Affairs, which ought not to be tranſacted without the concurrence of all three. Firſt, Such as concern the publick Safety and Weale, ſo far as ſtable detriment or advantage comes to the whole Body, by the well or ill carriage thereof; for then there is the ſame reaſon as in making new Laws. For why was not the power of making any new Laws left in the hands of one, but reſerved for the concurrence of all three? ſave becauſe the end of the Architects was, that no new thing which was of ſo much concernment as the ſtable good and damage of the Kingdom, ſhould be introduced without the conſent and advice of the whole: So that if any buſineſs be of that moment, that it is equipollent to a Law in the publick Intereſt, it ſhould be managed by ſuch an Authority and way as that is. Secondly, ſuch as introduce a neceſſity of publick Charge, be it matter of War or elſe, if to the effecting of it, the Purſe of the Kingdom be required, it is evident that it ought to be done by the concurrence of all, becauſe they only joyntly (as appears before) have power to impoſe a publick Charge on the Eſtates of men. And it were all one to put the power of our Eſtates in the hands of one, as to put the power of ſuch undertakings in his ſole hands, which of neceſſity bring after them an Engagement of publick Expence.

CHAP. V.

Queſt. 5. ***How far forth the two Eſtates may oppoſe and reſiſt the will of the Monarch?***

Sect. 1. THis Queſtion is in the general already handled in the firſt Part, ſo that it will be eaſie to draw thoſe Anſwers there to this particular here: Therefore conformably to what I then affirmed, I will anſwer this Queſtion by divers Poſitions.

Poſ. 1. Firſt, The Monarch working according to his power, not exceeding

exceeding the Authority which God and the Laws have conferred on him, is no way to be oppoſed either by any or all his Subjects, but in conſcience to Gods ordinance obeyed. This is granted on all ſides.

Secondly, If the Will and Command of the Monarch exceed the Limits of the Law, it ought for the avoidance of Scandal and Offence be ſubmitted to, ſo it be not contrary to Gods Law, nor bring with it ſuch an evil to our ſelves, or the publick, that we cannot be acceſſary to it by obeying. This alſo will find no Oppoſition. Diſobedience in light caſes, in which we are not bound, makes an appearance of fighting the Power, and is a diſreſpect to the Perſon of the Magiſtrate. Therefore Chriſt, to avoid ſuch offence, would pay Tribute, though he tells *Peter*, He was Free, and need not have done it. Poſ. 2.

Thirdly, If he command a thing which the Law gives him no Authority to command, and it be ſuch as would be inconvenient to obey, in this caſe Obedience may lawfully be denied: This alſo finds allowance from them which ſtand moſt for Royal Power. Doctor *Ferne* in his Preface acknowledges Obedience to be limited and circumſcribed by the Eſtabliſhed Laws of the Land, and accordingly to be yielded or denied. And Sect. 1. ſayes he, *We may and ought to deny Obedience to ſuch commands of the Prince as are unlawful by the Law of God, yea by the Eſtabliſhed Laws of the Land.* Here he ſayes more than we ſay, yea more than ſhould be ſaid, as appears in the ſecond Poſition: it is not univerſally true, that we ought. Poſ. 3.

Fourthly, If he exceed the Limits of the Law, and proceed in Courſes Illegal, means there are which it is agreed upon the Subjects may uſe to reduce him to Legal Government, ſo much Doctor *Ferne* allows *Sect.* 4. Cries to God, Petition to the Prince, Denial of Obedience, Denial of Subſidy, *&c.* Poſ. 4.

Fifthly, But the Point in Controverſie is about poſitive and forcible Reſiſtance, the Lawfulneſs of which ſome do utterly deny, and others do as confidently maintain: but yet this Point might be brought to a narrower State than in Poſ. 5.

the

the confuſed handling of it, it uſually is: by diſtinguiſhing betwixt forceable Reſiſtence uſed againſt the King's own Perſon, or againſt Inferior Officers and Inſtruments, adviſing to, or executing the Illegal Commands.

Sect. 2. For the firſt, As I have before expreſſed my ſelf, Force ought not to be uſed againſt the Perſon of the Sovereign, on any pretence whatever, by any or all his Subjects, even in limited and mixed Monarchies: for if they be truly Monarchs, they are irrevocably inveſted with Sovereignty, which ſets their Perſons above all Lawful Power and Force. Alſo the Sovereign Power being ſo conferred on that Perſon, the Perſon and Power cannot be really ſundred, but the Force which is uſed to the one, muſt alſo violate the other; for Power is not in the Sovereign as it is in Inferior Officers: as Water is otherwiſe in the Spring than in the Channels, and Pipes deriving it: It is not inſeparably in them, and therefore they offending, Force may be uſed againſt them without Violation of the Ordinance of Authority. Theſe Arguments prove it unlawful in any: That which the Doctor brings, I approve as ſtrong againſt all private Force, where he allows defence againſt the Perſon of the Prince himſelf, ſo far as to ward his blows, but not to return blows, no, though for natural defence; becauſe the Common-wealth is concerned in his Perſon, *Sect.* 2. And to divert a private evil by inducing a publick, is unjuſt and unlawful; ſo that for this Point of Force againſt the Perſon of the Prince: I think there ought to be no Contention. If any have been ſo raſh to hold it lawful on theſe Grounds, that the whole Kingdom is above him, becauſe they make him King, and that by miſcarriage he may make a Forfeiture, and ſo lay himſelf open to Force: I do judge theſe Grounds very inſufficient, unleſs the Kingdom reſerve a Superiority to it ſelf, or there be a Fundamental Clauſe of Forfeiture on ſpecified Cauſes; and then it is not properly a Monarchy: but all this hath been already handled in the general Part.

Secondly, For Inſtruments of Oppreſſion of Publick Liberty if the Wrong be deſtructive, and no other means of Preven-

prevention, but force, be left: I am perſwaded it may be uſed, and poſitive reſiſtence made againſt them: And if I find any contradiction from the moſt rigid Patrons of Royalty, it muſt be only in this Point. And here I muſt complain of the indiſtinct dealing of that Doctor in this matter; who mingleth both theſe Points together, and ſcarce ſpeaks any thing to reſolve mens Conſciences in this: But ſpeaks either in general, or elſe of Force againſt the Prince's own Perſon: Whereas I think, the caſe which ſticks moſt on the Conſcience at this time, is this latter: Of oppoſing, miſ-leading and miſ-imployed Subjects, which he ſpeaks very little to. Nay, he ſeems to me, after all his diſclaiming of reſiſtence, to come home to us, and though ſparingly, yet to aſſent to lawfulneſs of reſiſtence in this Point. For *Sect.* 2. ſpeaking of *David's* guard of armed men: He ſayes, Is was to ſecure his Perſon againſt the cut-throats of *Saul*, if ſent to take away his Life: He means to ſecure it by Force, for Soldiers are for force: He means no Negative ſecuring by flight, for that may be done even againſt *Saul* himſelf: but he ſpeaks of ſuch a ſecuring which might only be againſt Cut-throats. So then he grants ſecuring by force againſt theſe: But they went on *Saul's* command, and moſtly with his preſence. Again, in the inſtance of *Eliſha*, he ſeems to acknowledge lawfulneſs of Perſonal Defence againſt the ſudden and illegal Aſſaults of Meſſengers, he means by force, for he ſpeaks of ſuch which he will not allow in publick, which can be underſtood of none, but by force: But it appears the Doctor in his whole Diſcourſe, hath avoided this Point of reſiſtence of miſ-imployed Subjects; which yet is the alone Point which would have given ſatisfaction: for before it appears, we agree in all the reſt, and in this too for ought I know, he having not diſtinctly ſaid any thing againſt it.

Sect. 3.

Whether reſiſtence of Inferiours will be lawful.

Now concerning this caſe of forceable reſiſtence of inferior Perſons, miſ-imployed to ſerve the illegal deſtructive commands of the Prince, I will do two things. 1. I will maintain my *Aſſertion* by convincing Arguments. 2. I will ſhew the Invalidity of what is ſaid againſt it.

Assert. 1. This then is my *Assertion*: The two Estates in Parliament may lawfully by force of Arms, resist any Persons or number of Persons advising or assisting the King in the performance of a command illegal and destructive to themselves, or the Publick.

Arg. 1. 1. Because that Force is lawful to be used for the Publick conservation, which is no resistance of the Ordinance of God for that is the reason condemning the resistance of the Powers: Now this is no resistance of God's Ordinance: For by it neither the Person of the Soveraign is resisted, nor his Power: Not his Person, for we speak of Agents imployed, not of his own Person, nor his Power; for the measure of that, in our Government, is acknowledged to be the Law: And therefore he cannot confer Authority to any beyond Law: So that those Agents deriving no Authority from him, are meer Instruments of his Will; Unauthorized Persons; in their Assaults Robbers, and as Dr. *Ferne* calls them, Cut-throats. If the case be put, What if the Soveraign himself in Person be present with such Assaylants, joyning his Personal assistance in the execution of his Commands? It is much to be lamented that the will of the Prince should be so impetuous in any subverting Act, as to hazzard his own Person in the prosecution of it. Yet supposing such a case, all councils and courses must be taken, that no Violence be offer'd to his Person, and profession of none intended: But no reason the presence of his Person should priviledge ruining Instruments from suppression, and give them an immunity to spoil and destroy Subjects, better themselves: His Person being secured from wrong: His Power cannot be violated in such an Act, in which none of it can be conferr'd on the Agents. And sure *David* tho' he avoided laying hands or using any violence against the Person of *Saul*, and on no extremity would have done it: Yet for the Cut-throats about him, if no other means would have secured him, he would have rescued himself by force from their outrage, though *Saul* was in their Company; else what intended he by all that force of Souldiers, and his enquiry of God at *Keilah*: By which it is plain, he had an intent to have kept the place by force, if the

the People would have ſtuck to him. Neither is it to the purpoſe which the Dr. ſays, *Sect.* 2. That his example was extraordinary, becauſe he was anointed and deſigned to ſucceed *Saul*, for that being but a deſignation, did not exempt him from the duty of Subjection, for the preſent, or leſſon it, as is plain, by the great Conſcience he made of not touching *Saul*: But he knew it was one thing to violate *Saul's* Perſon and Power, and another to reſiſt thoſe Inſtruments of Tyranny, the Cut-throats which were about him.

Secondly, Becauſe without ſuch power of Reſiſtance in the hands of Subjects, all diſtinction and limitation of Government is vain, and all formes reſolve into abſolute and Arbitrary; for that is ſo which is unlimited; and that is unlimited, not only which hath no limits ſet, but alſo which hath no ſufficient limits; for to be reſtrained from doing what I will, by a Power which can reſtrain me no longer, nor otherwiſe than I will, is all one, as if I were left at my own Will. I take this to be clear: Now it is as clear, that without this forcible reſiſtance of Inſtruments of uſurped Power be lawful, no ſufficient limits can be to the Prince's Will; and all Laws bounding him, are to no purpoſe. This appears by enumerating the other means; Prayer to God; Petition to the Prince; denial of Obedience, denial of Subſidy; a moderate uſe of the power of denying, as Doctor *Fern* calls it: Theſe are all; but what are theſe to hinder, if a Prince be minded to overthrow all, and bring the whole Government to his own Will? For Prayer and Petition, theſe are put in to fill up the number: They are no limitations, they may uſed in the moſt abſolute Monarchy; for denial of obedience, that may keep me from being an Inſtrument of publick Servitude; but Princes Wills never want them which will yield obedience, if I deny it; yea, enough to deſtroy all the reſt, if nothing be left them but to ſuffer: Then for denial of Subſidy, if he may by thouſands of Inſtruments take all, or what he or they pleaſe, and I muſt not reſiſt: What need he care whether the People deny or grant, if a Prince be taught that he may do it: Caſes and Reaſons will ſoon be brought to perſwade him, that in them Arg. 2.

he may lawfully do it, as late Experiences have given us too much Teſtimony: Thus it is apparent, that the denial of this Power of Reſiſtence of Inſtruments overthrows, and makes invalid all Government, but that which is abſolute; and reduces the whole World *de Jure* to an abſolute ſubjection, that is, Servitude; for the end of all Conſtitution of moderated Forms, is not that the Supream Power might not lawfully exorbitate, but that it might have no power to exorbitate.

The Dr. is conſcious hereof, and therefore tells us in his *Sect.* 5. This is the very reaſon which is made for the Pope's Power of curbing and depoſing Kings in caſe of Hereſie; becauſe elſe the Church, ſayes the *Papiſt*, hath no means for the maintenance of the Catholick Faith, and its own ſafety: But who ſees not the vaſt difference betwixt theſe two? and that the ſame reaſon may be concluding here, which is apparently *non* concluding there: For 1. They thereby would draw to the *Pope* an authoritative Power: we no ſuch Superior Power, but only a Power of Reſiſtence for ſelf-conſervation, which Nature and the Law of Reaſon gives to every one; and may ſtand with the condition of Subjection and Inferiority. 2. They on this reaſon give the *Pope* a Power over the very Perſon of the King, we only of reſiſting of unauthorized invading deſtroyers, comming under the colour of an Authority which is not in the Sovereign to be derived. 3. They prove a Civil Right for Spiritual Reaſons, we only for Civil Reaſons. 4. The Church and the Faith are conſtituted in their very formal being from Chriſt himſelf, who is the Head and great Sheepherd immediately in his own Perſon: and as it is his own Family, ſo he keeps the Power of preſerving it in his own hands; having made direct and particular promiſes to aſſure us of their upholding againſt all Subverſion by his own power; ſo that here is aſſurance enough, without viſible means of force for a Spiritual Body, which lives by Faith. But in a civil State there is no ſuch aſſurance nor ſupporting Promiſes; power only in the undefined being of it, being God's immediate Ordinance, and not in this ſpecificated or determinate being, wherefore it hath

hath no ſuch immediate proviſion made for its preſervation, no promiſe of a Divine Power for its ſtanding: but as it is left by God to Mens Wiſdom to contrive the frame, ſo to their Providence to eſtabliſh means of preſervation. As the Body is outward and civil, ſo the upholding means muſt be ſuch; Spiritually and Infallibly aſſuring a Formed State hath not, as the Church and Faith have; if there be none of outward force and power neither, then none at all it hath, and is in ill caſe indeed. But there is an art full of Venom, when a truth cannot be beaten down by juſt reaſoning, then to make it odious by hateful compariſons; ſo in this caſe Aſperſions are caſt, as if the Patrons of Reſiſtance did borrow the Popiſh and Jeſuitical Grounds, and their Poſitions as dangerous to Kings, as the Jeſuits Hell-bred and bloudy Principles: Whereas it appears by all this Diſcourſe, and I am perſwaded is written in Capital Letters in the very Conſcience of them which deſpightfully object it, that there is no Congruity at all betwixt their Doctrines, no more than betwixt Light and Darkneſs.

Thirdly, Becauſe ſuch Power is due to a Publick State for its preſervation, as is due to a particular Perſon: But every particular Perſon may lawfully by force reſiſt illegal deſtructive Miniſters, though ſent by the command of a legal Sovereign, provided no other means of ſelf-preſervation be enough. This Aſſumption the Doctor ſeems to grant; he denies it to be lawful againſt the Perſon of the Prince, but in effect yields it againſt ſubordinate Perſons: But the main is againſt the Propoſition, and the Doctor is ſo heavy a Friend to the State, that he thinks it not fit to allow it that liberty he gives every private man. But whoſe Judgment will concur with his herein, I cannot imagine; for ſure the Reaſon is greater, the publick ſafety being far more precious, and able to ſatisfie the damages of a publick Reſiſtance, then one particular Mans is of a private. But of this more in anſwer to his Reaſons. Arg. 3.

Fourthly, Becauſe it is a power put into the two Eſtates by the very reaſon of their Inſtitution; and therefore they not only may, but alſo ought to uſe it for publick ſafety: yea, they Arg. 4.

they ſhould betray the very truſt repoſed in them, by the Fundamentals of the Kingdom if they ſhould not. An Authority Legiſlative they have: Now to make Laws and to preſerve Laws are acts of the ſame power; yea, if three powers joyntly have intereſt in making of Laws, ſurely either of theſe ſeverally have, and ought to uſe that power in preſerving them: Alſo, that the Authority which the Houſes have, is as well given them for preſerving the Government by eſtabliſhed Laws, as for eſtabliſhment of Laws to govern by, is a truth proved by the conſtant uſe of their power to that end, in correcting the exorbitance of Inferiour Courts, queſtioning Delinquent Judges and Officers of State for Violations; and much is done in this kind by the ſole Authority of the Houſes, without the concurrence or expectance of Royal power: So then, ſuppoſing they have ſuch an Authority for ſafety of publick Government, to queſtion or cenſure inferior Officers for Tranſgreſſions, though pretending the King's Authority, can it be denied but that their Authority will bear them out to uſe forcible reſiſtance againſt ſuch, be they more or fewer.

Arg. 5. Fifthly, The King's Warrant under his hand exempts not a Malefactor from the cenſure of a Court of Juſtice, nor puniſhment impoſed by Law, but the Judge muſt proceed againſt him according to Law; for the Law is the King's publick and authoritative will; but a private Warrant to do an unlawful act, is his private and unauthoritative Will; wherefore the Judge ought to take no notice of ſuch Warrant, but to deal with the Offender as no other than a private Man. This proves that ſuch Inſtruments thus illegally warranted, are not authorized, and therefore their violence may be by force reſiſted, as the aſſaults of private men, by any; and then much rather by the Houſes of Parliament: which, ſuppoſing them divided from the King to have no compleat authority, yet ſure they have two parts of the greateſt Legiſlative Authority. But I fear I ſhall ſeem ſuperfluous, in producing Arguments to prove ſo clear a truth: It is credible that any one will maintain ſo abject an eſteem of their Authority, that it will not extend to reſiſtance

ſtance of private men, who ſhould endeavor the ſubverſion of the whole frame of Government, on no other Warrant than the Kings Will and Pleaſure? Muſt they be meerly paſſive? Is patience, and the denial of their Votes to a ſubverſion, all the oppoſition they muſt uſe, if a King (which God forbid) ſhould on His Royal pleaſure ſend Cut-throats to deſtroy them as they ſit in their Houſes? Is all their Authority (if the King deſert them or worſe) no more than to Petition, and ſuffer; and by a moderate uſe of their power of denying, diſſent from being willing to be deſtroyed? If power, of reſiſting by force of ſubverters armed by the Kings Will (for by his Authority they cannot) be unlawful for them, all theſe abſurdities muſt follow: Yea, the vileſt Inſtrument of Oppreſſion, ſhewing but a Warrant from the King to bear him out, may range and rage all his days through a Kingdom, to waſte and ſpoil, tax and diſtrain, and at utmoſt of his inſolence muſt have no more done to him by the Parliament it ſelf, than to ſtay his hand, as the baſeſt Servant may his Maſters, or the meaneſt Subject the Kings own hand; by the Doctors own confeſſion. Conſider then, and admire, if any man of learning will deny this power of forcible reſiſtance of Miniſters, of ſubverting Commands to be lawful. I have thus far confirmed my aſſertion, not that I find any openly oppoſing it, but becauſe the Doctor and ſome other ſeem to have a mind that way, and do ſtrike at it, though not profeſſedly and in open diſpute.

For the ſeveral proofs brought in behalf of Reſiſtence, ſome of them prove as much as is here aſſerted; others are not to the purpoſe. Particularly, that of the Peoples reſcuing *Jonathan* from his Fathers bloody reſolution, proves lawfulneſs of hindering unreaſonable ſelf-deſtructive purpoſes even in abſolute Monarchies, if it prove any thing. That of *Uzzah*'s thruſting out by the Prieſts, is not to the purpoſe: but *Davids* raiſing and keeping Forces about him, and his purpoſe at *Keilah*, proves the point directly, *viz.* Lawfulneſs of forcible reſiſtance of Cut-throats, even though *Saul* himſelf were in preſence: This the Doctor ſees plainly, and therefore ſhuffles it off, by ſaying, *His example is extraordi-*

nary.

vary; as if he were not a preſent Subject, becauſe he was deſigned by Gods revealed Counſel to be a future King. And he confeſſes *Eliſha's* example of ſhutting the door againſt the Kings Meſſenger proves perſonal defence againſt ſudden illegal aſſaults of Meſſengers, which is the thing in Queſtion.

Sect. 4. *Arguments on the contrary diſſolved.*

Let us now view the ſtrength of what is ſaid againſt reſiſtance, whether any thing comes home againſt this Aſſertion. The Doctors proofs from the Old Teſtament come not to the matter: *Moſes*, and afterwards the Kings, were of Gods particular deſignation, ſetting them Abſolutely over the people, on no condition or limitation; ſo that did they prove any thing, yet they concern not us, reſpecting a Government of another nature. But particularly, that of *Corah* and the Princes Rebelling againſt *Moſes*, is not to the matter; it was a reſiſtance of *Moſes* own Perſon and Office; and doubtleſs penury of other proofs cauſed this and the reſt here to be alledged: For that 1 *Sam.* 8.18. how inconſequent is it, to ſay, the People ſhould cry unto the Lord, therefore they had no other means to help them but cries to God; though (I confeſs) in that Monarchy they had not. That ſpeech 1 *Sam.* 26.9. was moſt true there, and is as true here, but not to the purpoſe, being ſpoken of the Kings own Perſon. But the main Authority brought againſt reſiſtance, is that *Rom.* 13. and on that Doctor *Fern* builds his whole diſcourſe: Let us therefore ſomething more largely conſider what is deduced out of that Text. Firſt, He ſuppoſes the King to be the *Supream* in Saint *Peter*, and the *Higher power* in Saint *Paul*. Secondly, He Collects *All perſons*, every Soul is forbidden to reſiſt. Thirdly, That then was a ſtanding Senate, which not long before had the Supream Power in the Roman State: It is confeſſed; but that they could challenge more at that time when Saint *Paul* writ, than our great Councill will or can, I deny: For that State devolving into Monarchy by Conqueſt, they were brought under an Abſolute Monarchy, the Senate it ſelf ſwearing full ſubjection to the Prince; his Edicts and Acts of Will were Laws, and the Senates conſent only *pro forma*, and at pleaſure

ſitre required. He who reads *Tacitus*, cannot but ſee the Senate brought to a condition of baſeſt ſervitude, and all Laws and Lives depending on the Will of the Prince: I wonder then the Doctor ſhould make ſuch a parallel. Indeed the Senate had been far more than ever our Parliaments were or ought to be; but now that was far leſs than our Parliament hath been, or (I hope) ever will be: They were become the ſworn Vaſſals of an abſolute Emperour, ours the ſworn Subjects of a Liege or Legal *Prince*. Fourthly, he ſays, then was more cauſe of Reſiſtance, when Kings were Enemies to Religion, and had overthrown Laws and Liberties. I anſwer, There were no cauſes for Reſiſtance: Not their enmity to Religion, had they but a legal power, becauſe Religion then was no part of the Laws, and ſo its violation no ſubverſion of eſtabliſhed Government. And for the overthrow of Laws and Liberties, that was paſt and done, and the Government new, the Senate and all the reſt actually ſworn to abſolute Principality. Now an Ordinance of Abſolute *Monarchy* was conſtituted, the ſacred bond of an Oath had made it inviolate. But what would he infer hence, all being granted him? Sure this he doth intend, That every ſoul among us, ſeveral and conjoyned in a Senate, muſt be ſubject for Conſcience, muſt not reſiſt, under pain of Damnation. All this, and whatever beſides he can juſtly infer out of this Text, we readily grant. But can any living man hence collect, that therefore no reſiſtance may be made to fellow-ſubjects, executing deſtructive illegal Acts of the Princes Will in a legal *Monarchy*? Will he affirm, that the Ordinance of God is reſiſted, and Damnation incurred thereby? Gods Ordinance is the power, and the perſon inveſted with that power; but here force is offered to neither, as before I have made it appear. And herein we have B. *Bilſon* conſenting, where he ſays, that *the ſupreme power here forbidden to be reſiſted is not the Princes will againſt his Laws, but agreeing with his Laws.* I think the day it ſelf is not more clear than this ſatisfaction, to all that can be concluded out of that Text: ſo the foundation of all that Diſcourſe is taken from it, if his intent were thence to prove

Bilſon *of Subjett. p.* 94. & 280.

unlawfulneſs of Reſiſtance of Inſtruments of Arbitrarineſs in this Kingdom.

Let us alſo conſider the force of his Reaſons, whether they impugn this point in hand. He ſays, ſuch power of Reſiſtance would be no fit means of ſafety to a State, but prove a Remedy worſe than the Diſeaſes. His Reaſons, 1. Becauſe it doth tend to the overthrow of that Order, which is the Life of a Commonwealth; it would open a way to people, upon the like pretences, to reſiſt and even overthrow power duly adminiſtred. 2. It may proceed to a change of Government. 3. It is accompanied with the evils of Civil War. 4. On the ſame ground the two Houſes proceed againſt the King, may the people proceed to reſiſtance againſt them; accuſing them not to diſcharge their Truſt. Laſtly, ſeeing ſome muſt be truſted in every State, it is reaſon the higheſt and final Truſt, ſhould be in the higheſt Power. Theſe are his main Reaſons on which he builds his Concluſion, againſt Reſiſtance.

To his firſt, I ſay it were ſtrange if Reſiſtance of deſtructive diſorder ſhould tend to the overthrow of Order: It may for the time diſturb, as Phyſick while it is in working diſturbs the natural body, if the peccant humours make ſtrong oppoſition; but ſure it tends to health, and ſo doth this Reſiſtance of diſorder to Order. Neither would it open a way for the people to violate the Powers; for doing right can open no way to the doing of wrong. If any wicked ſeditious ſpirits ſhould make uſe of the Vail of Juſtice to cover unnatural Rebellion. Shall a peoples Right and Liberty be taken from them to prevent ſuch poſſible Abuſe? Rather let the foulneſs of ſuch pretences diſcover it ſelf, ſo God and good men will abhor them: ſuch Cloaks of Rebellion have in former Ages been taken off, and the Authors brought to juſt confuſion, without the expence of the Liberties of this Kingdom.

To the ſecond, Muſt not Inſtruments be reſiſted, which actually intend, and ſeeked a change of Government, becauſe ſuch reſiſtance may proceed to a change of Government? Is not an unlikely poſſibility of change to be hazarded, rather than

than a certain one ſuffered? But I ſay, It cannot proceed to a change of Government, unleſs it exceed the meaſure of lawful reſiſtance: yea, it is impoſſible that reſiſtance of Inſtruments ſhould ever proceed to a change of Government; for that includeth the greateſt reſiſtance and violation of the perſon and power of the *Monarch*, the lawfulneſs of which I utterly diſclaim.

Thirdly, It is not ever accompanied with the evils of Civil War; but when the Princes Will finds enough Inſtruments of their Countries ruine to raiſe it: And then the miſchief of that War muſt light on thoſe which raiſe it. But ſuppoſe it may enſue, yet a temporary evil of War is to be choſen rather than a perpetual loſs of Liberty, and ſubverſion of the eſtabliſhed frame of a Government.

In the fourth, I deny the parity of Reaſon: for the two Houſes are Bodies conſtituted and endowed with Legiſlative Authority, and Truſt of preſervation of the Frame, by the Fundamentals of the Kingdom; which the people out of thoſe Houſes are not. Again, the Government being compoſed of a threefold conſenting Power, one to reſtrain the exorbitance of another: All three together are abſolute and equivalent to the Power of the moſt *Abſolute Monarch*: The concurrent Will of all three, makes a Law, and ſo it is the Kingdoms Law.

To the laſt, I anſwer, In every State ſome muſt be truſted, and the higheſt Truſt is in him who hath the Supream power. Theſe two, the Supream Truſt, and the Supream Power, are inſeparable: And ſuch as the power is, ſuch is the truſt: An abſolute power, ſuppoſes an abſolute truſt! A power allayed with the annexion of another power, as here it is, ſuppoſeth a truſt of the ſame nature. A joynt truſt, yet ſaving the Supremacy of the *Monarch*, ſo far forth as it may be ſaved, and not be abſolute, and the others Authority nullified. It may be further argued, That it being the Prerogative Royal to have the managing of the Sword, that is, Legal force in the Kingdom; none can, on any pretence whatever, uſe lawful force, either againſt him, or any, but by his Will: for it is committed to him by Law, and to none

How far forth the Sword is in the hand of the Monarch.

but whom he assigns it to: so that the Laws of the Kingdom putting all power of Force and Arms into his Trust, have placed him, and all those who serve him, in a state of Irresistibleness in respect of any lawful Force. This is a point much stood on, and on this ground, the Parliament now assuming the disposing of the Militia by an Ordinance, it is complained on, as a Usurping of what the Law hath committed to the King, as his Prerogative; the opposing of which Ordinance by a Commission of *Array*, was the beginning of this miserable Civil-War. I will distinctly lay down my Answer hereto, submitting it to every Impartial Judgement.

Pos. 1. 1. The power of the Sword, being for Defence of the Laws, by punishing Violators, and protecting Subjects, it is subservient to Government, and must needs belong to him who is entrusted with the Government, as a necessary requisite, without which he cannot perform his Trust.

Pos. 2. 2. As it is an Appendix to the power of Government, and goes along with it, so it goes under the same terms, belonging to the Prince, as the other doth, *sc.* absolutely, to use at Will, where the Monarchy is Absolute, or with limitation, to use according to Law, where the Monarchy is limited: so that, in this Government the Arms and Sword of the Kingdom is the Kings, to a defined use committed to him, *viz.* For defence of the Laws and Frame of Government Established, and not for Arbitrary Purposes, or to enable Ministers to execute Commands of meer Will.

Pos. 3. 3. The two Houses in Virtue of the Legislative Authority, in part residing in them, are interested in the preservation of Laws and Government, as well as the King: And in case the King should misimploy that power of Arms to strengthen Subverting Instruments: Or in case the Laws and Government be in apparent Danger, the King refusing to use the Sword to that end of Preservation for which it was committed to him: I say, in this Case, the two Estates may by extraordinary and temporary Ordinance assume those Arms wherewith the King is entrusted, and perform the King's Trust: And though such Ordinance of theirs is not for-

formally legal, yet it is eminently legal, justified by the very intent of the Architects of the Government, when for these uses they committed the Arms to the King. And no doubt they may command the strength of the Kingdom to save the being of the Kingdom: for none can reasonably imagine the Architectonical Powers, when they committed the Power of Government and Arms to one to preserve the Frame they had composed, did thereby intend to disable any, much less the two Estates from preserving it, in case the King should fail to do it in this last need. And thus doing the King's Work, it ought to be interpreted as done by his Will; because as the Law is his Will, so that the Law should be preserved is his Will, which he expressed when he undertook the Government: 'Tis his deliberate Will, and ought to be done, though at any time he oppose by an after-Will, for that is his sudden Will, as Doctor *Fern* himself, *Sect.* 1. doth teach us to distinguish.

CHAP. VI.

In what Cases the other Estates may, without or against the King's Personal Consent, assume the Arms of the Kingdom? Quest. 6.

WHO ever were the Authors of that Book lately published, Stiled, *Scripture and Reason pleaded for Defensive Arms*, have laid new and over large Grounds for Resistence. Two Assertions they endeavour to maintain: First, *Those Governours (whether Supreme or others) who under pretence of Authority from Gods Ordinance, disturb the quiet and peaceable Life in Godliness and Honesty, are far from being Gods Ordinance in so doing*, Sect. 3. Secondly, *This Tyranny not being Gods Ordinance, they which resist it even with Arms, resist not the Ordinance of God.* Hereon. *Sect.* 4. They free Christians, even in the Apostles time, and so under the Roman Emperours, or any other Sect. 1. *Whether it be lawful to take up Arms against the Magistrate, perverting his Power to a wrong end.*

other Government, from neceſſity of paſſive Subjection in caſe of Perſecution; affirming, that the Chriſtians in thoſe firſt Perſecutions, had they been ſtrong enough, might have uſed Arms for Defence againſt the Tyranny of their Emperour. Their ground is from the Reaſons uſed by the Apoſtle, *Rom.* 13. where he commands ſubjection, & forbids reſiſtence to the higher power, becauſe *they are Gods Ordinance, his Miniſter, for praiſe to well-doers, for terrour to evil-doers.* But I muſt profeſs my ſelf to diſſent from them in this opinion, conceiving that the Apoſtle in urging thoſe Reaſons drawn from the due ends of Power, doth intend to preſs them to Subjection, by ſhewing them what Benefit comes to men by Authority in its due uſe; and not to ſhew them how far they are bound to be ſubject, and in what caſes they may reſiſt: For had he ſuch a meaning at that time, when the Governours did altogether croſs thoſe ends of their Ordination, he had taught them rather a Doctrine of Reſiſtance then Subjection: Shall we conceive that he would preſs Subjection to Powers in the hands of Heathens and Perſecutors, if he had not intended they ſhould paſſively be ſubject unto them, even under thoſe Perſecutions? Rather I approve the received Doctrine of the Saints in ancient and modern times, who could never find this Licence in that place of the Apoſtle, and do concur with Maſter *Burroughs*, profeſſing againſt Reſiſtance of Authority, though abuſed: *If thoſe* (ſaith he) *who have Power to make Laws, make ſinful Laws, and ſo give Authority to any to force Obedience, we ſay here there muſt be either flying, or Paſſive Obedience.* And again, *We acknowledge we muſt not reſiſt for Religion, if the Laws of the Land be againſt it.* But what do they ſay againſt this? In making ſuch Laws againſt Religion, the Magiſtrates are not God's Ordinance; and therefore to reſiſt is not to reſiſt God's Ordinance: As an Inferiour Magiſtrate, who hath a Commiſſion of power for ſuch ends, is reſiſtible if he exceed his Commiſſion, and abuſe his power for other ends; ſo Princes being Gods Miniſters, and having a deputed Commiſſion from him to ſuch ends, *viz.* the promotion of Godlineſs, Peace, Juſtice, if they pervert their Power to contrary ends, may be reſiſted without

Anſwer to Dr. Fern. Stil. 2.

out violation of God's Ordinance. That I may give a ſatisfactory Anſwer to this, which is the ſum of their long Diſcourſe, I muſt lay it down in ſeveral Aſſertions.

Firſt, I acknowledge God's Ordinance is not only Power, but Power for ſuch ends, *ſc.* the good of the People. Aſſert. 1.

Secondly, It is alſo God's Ordinance, that there ſhould be in men, by publick conſent called thereto, and inveſted therein, a power to chooſe the Means, the Laws and Rules of Government conducing to that end; and a power of judging in relation to thoſe Laws, who be the Well-doers which ought to be praiſed, and who the Evil-doers who ought to be puniſhed. This is as fully God's Ordinance as the former; for without this the other cannot be performed. Aſſert. 2.

Thirdly, When they who have this final civil Judicature, ſhall cenſure good men as Evil-doers, or eſtabliſh Iniquity by a Law, to the encouragement of Evil-doers; in this Caſe, if it be a ſubordinate Magiſtrate that doth it, Appeal muſt be made (as St. *Paul* did) to the ſupreme; if it be the ſupreme, which through miſtake, or corruption doth miſ-cenſure, from whom there lies no civil Appeal, then, without reſiſtance of that Judgment, we muſt paſſively ſubmit: And he who in his own knowledge of Innocency, or goodneſs of his Cauſe, ſhall by force reſiſt, that man erects a Tribunal in his own heart, againſt the Magiſtrates Tribunal; clears himſelf by a private Judgment againſt a publick, and executes his own Sentence by force againſt the Magiſtrates Sentence, which he hath repealed and made void in his own heart. In unjuſt Cenſures by the higheſt Magiſtrates, from whom there is no Appeal, but to God, the Sentence cannot be oppoſed, till God reverſe it, to whom we have appealed: In the mean time we muſt ſuffer, as Chriſt did, notwithſtanding our Appeal, 1 *Pet.* 2. 23. and ſo muſt we notwithſtanding our Appeal, 1 *Pet.* 4. 19. for he did ſo for our example. If an Appeal to God, or a Cenſure in the Judgement of the Condemned, might give him power of reſiſtance, none would be guilty, or ſubmit to the Magiſtrates Cenſure, any further then they pleaſe. I deſire thoſe Authors, before they ſettle their Judgment in ſuch grounds (which I fear Aſſert. 3.

will

will bring too much scandal) to weigh these particulars: First, Their Opinion takes away from the Magistrate the chief part of God's Ordinance, *sc.* Power of definitive Judgement of Laws and Persons, who are the good, and who the bad, to be held so in Civil Proceedings. Secondly, They justifie the Conscience of Papists, Hereticks, and grossest Malefactors, to resist the Magistrate, in case they be perswaded their Cause be good. Thirdly, They draw men off from the commands of Patience under Persecution, and conforming to Christ and his Apostles, in their patient enduring without verbal or real Opposition, though Christ could not have wanted power to have done it, as he tells *Peter*. Fourthly, They deprive the primitive and modern Martyrs of the Glory of suffering, imputing it either to their Ignorance or Disability. Fifthly, It is a wonder, that ith in Christ's and his Apostles time there was so much use of this power of resistance, they would by no expres's word shew the Christians this liberty, but condemn resistance so severely. Sixthly, There is in the case of the Parliament now taking up Arms, no need of these offensive grounds, Religion being now a part of our National Law, and cannot suffer but the Law must suffer with it.

Sect. 2. Now to the proposed Question, I answer, first Negatively, *sc.* 1. It ought not to be done against all Illegal Proceedings, but such which are subversive and unsufferable. Secondly, Not publick Resistance, but in excesses inducing publick Evils; for to repel private Injuries of highest nature with publick hazzard and disturbance, will not quit cost, unless in a private Case the common Liberty be struck at. Thirdly, Not when the Government is actually subverted, and a new form (though never so injurious) set up, and the people already engaged in an Oath of absolute Subjection; for the remedy comes too late, and the establishment of the new makes the former irrevocable by any justifiable Power, within the compass of that Oath of GOD: This was the Case of the Senate of *Rome*, in St. *Paul*'s time. Secondly, Affirmatively: I conceive three Cases, when the other Estates may lawfully

1. *When Arms ought not to be assumed.*

2. *When they may be assumed.*

fully assume the force of the Kingdom, the King not joyning, or dissenting, though the same be by Law committed to him: First, When there is Invasion actually made, or imminently feared by a forreign Power. Secondly, When by an intestine Faction the Laws and Fram of Government are secretly undermined, or openly assaulted: In both these cases the Being of the Government being endangered, their Trust binds, as to assist the King in securing, so to secure it by themselves, the King refusing. In extrem necessities the liberty of Voices cannot take place, neither ought a Negative Voice to hinder in this exigence, there being no freedom of Deliberation and Choice, when the Question is about the last end: Their assuming the Sword in these cases, is for the King, whose Being (as King) depends on the Being of the Kingdom; and being interpretatively his Act, is no disparagement of his Prerogative. Thirdly, In case the Fundamental Rights of either of the three Estates be invaded by one or both the rest, the wronged may lawfully assume Force for its own defence; because else it were not free, but dependent on the pleasure of the other. Also the suppression of either of them, or the diminishing of their Fundamental Rights, carries with it the Dissolution of the Government: And therefore those grounds which justifie Force to preserve its Being, allows this Case, which is a direct Innovasion of its Being and Fram.

CHAP. VII.

Where the Legal Power of Final Judging in these Cases doth reside, in case the three Estates differ about the same?

Quest. 7.

IN this Question (for our more distinct proceeding) some things are necessarily to be observed: First, That we meddle not here with the Judicature of Questions of inferi-

Sect. 1. *The Question Stated.*

our nature, viz. such as are twixt Subject and Subject, or the King and a Subject, in a matter of particular Right, which may be decided other way, without detriment of the publick Peace, or diminution of the Privileges of either of the three Estates. Secondly, Difference is to be made even in the Questions of utmost danger. First, For it may be alledged to be either from without, by Invasion of forraign Enemies, or by a Confederacy of intestine Subverters, in which neither of the three Estates are alledged to be interested, and so the case may be judged without relation to either of them, or detriment to their Privileges. Here I conceive a greater latitude of Power may be given to some to judge without the others; for it infers not a subordinating of any of the three to the other. Secondly, Or else it may be alledged by one or two of the Estates against the other, that not contenting it self with the Powers allowed to it by the Laws of the Government, it seeks to swallow up, or entrench on the Privileges of the other, either by immediate endeavours, or else by protecting and interesting it self in the subversive Plots of other men. Thirdly, In this case we must also distinguish betwixt, first, Authority of raising Forces for defence against such Subversion, being known and evident: secondly, and Authority of Judging and final Determining, that the accused Estate is guilty of such design and endeavour of Subversion, when it is denied and protested against. This last is the particular in this Question to be considered; not whether the people are bound to obey the Authority of two, or one of the Legislative Estates, in resisting the subversive Estates of the other, being apparent and self-evident; which I take in this Treatise to be clear. But when such Plea of Subversion is more obscure and questionable, which of the three Estates hath the power of ultimo and supreme Judicature, by Vote or Sentence to determine it against the other? So that the people are bound to rest in that Determination, and accordingly to give their assistance, *eo nomine*, because it is by such Power so noted and declared.

Determination of the Question.

For my part, in so great a Cause, if my earnest desire of publick good and peace, may justifie me to deliver my mind,

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I will preſcribe to the very Queſtion; for it includes a Soleciſm in Government of a mixt temperature: To demand which Eſtate may challenge this Power of final Determination of fundamental Controverſies ariſing betwixt them, is to demand which of them ſhall be Abſolute: for I conceive that in the firſt part hereof, I have made it good, that this final utmoſt Controverſie ariſing betwixt the three Legiſlative Eſtates, can have no legal conſtituted Judge in a mixed Government: For in ſuch Difference, he who affirms, That the People are bound to follow the Judgment of the King againſt that of the Parliament, deſtroys the mixture into Abſolutenels. And he who affirms, That they are bound to cleave to the Judgment of the two Houſes, againſt that of the King, reſolves the Monarchy into an Ariſtocracy, or Democracy, according as he places this final Judgment. Whereas I take it to be an evident truth, that in a mixed Government, no power is to be attributed to either Eſtate, which directly, or by neceſſary conſequence, deſtroys the Liberty of the other.

Yet it is ſtrange to ſee, how in this Epidemical Diviſion of the Kingdom, the Abettors of both parts claim this Unconceſſible Judgment. But let us leave both ſides, pleading for that which we can grant neither, and weigh the ſtrength of their Arguments. Sect. 2.

Firſt, Dr. *Ferne* lays down two Reaſons, why this final Judgment ſhould belong to the King: 1. Monarchy, ſays he, *Sect.* 5. ſettles the chief Power and final Judgment in one. This *Poſition* of his can be abſolutely true no where, but in Abſolute Monarchies: and in effect, his Book knows no other than Abſolute Government. 2. Seeing ſome one muſt be truſted in every State, *It is reaſon*, ſays he, Sect. 5. *the higheſt and final Truſt ſhould be in the higher and ſupreme Power.* I preſume by final Truſt, he means the Truſt of determining theſe ſupreme and final Diſagreements: and accordingly I anſwer, It is not neceſſary that any one be truſted with a binding Power of Judicature in theſe Caſes; for by the Foundations of this Government, none is, yea, none can be truſt- *Diſſolution of Arguments placing it in the King.*

ed with it. For to intend a mixed Government, and yet to settle the last Resolution of all Judgment in one, is to contradict their very Intention. Neither in a constituted Government must we dispose of Powers according to the gues of our Reason, for mens Apprehensions are various: The Doctor thinks this power fittest for the King; his Answerers judge it fittest for the two Houses, and give their Reasons for it too. Powers must there reside, where they are *de facto* by the Architects of a Government placed: He who can bring a Fundamental Act, stating this power in any, says something to the matter; but to give our Conjectures where it should be, is but to provide Fuel for Contention.

Dissolution of the Arguments placing it in the two Houses.

On the contrary, The Author of that which is called, *A Fuller Answer to that Doctor*, hath two main Assertions placing this Judgment in the two Houses.

1. The final and casting result of this States Judgment concerning what these Laws, Dangers, and means of prevention are, resides in the the two Houses of Parliament, says he, *p.* 10.

2. In this final Resolution of the States Judgment, the people are to rest, *ibidem*, pag. 14. Good Lord! What extream Opposition is between these two sorts of Men? If the Maintenance of these Extreams be the Ground of this War, then our Kingdom is Miserable, and our Government lost, which side soever overcome: For I have, more than once, made it good, that these Assertions are destructive on both sides: But I am rather perswaded, that these Officious Propugners overdo their Work, and give more to them whose Cause they plead, then they ever intended to Assume; Nay, rather give to every one their due; give no power to one of these three to crush, and undo the other at pleasure: But why doth this Answer give all that to the two Houses which ere while they would not suffer, when the Judges in the Case of Ship-money had given it to the King? sure, when they denied it to him, they did not intend it to themselves. 1. He tells us, In them resides the Reason of the State: And that the same Reason and Judgment of the State which first gave this Government its Being, and Constitution; therefore all

all the people are to be led by it, and ſubmit to it as their publick Reaſon and Judgment.

I Anſwer, If by State he mean the whole Kingdom: I ſay, the Reaſon of the two Houſes divided from the King, is not the Reaſon of the Kingdom, for it is not the King's Reaſon, who is the Head and Chief in the Kingdom. If by State be meant the people, then it muſt be granted, that as far forth as they repreſent them, their Reaſon is to be accounted the Reaſon of the Kingdom, and doth bind ſo far forth as the publick Reaſon of the Kingdom can bind after they have reſtrained their Reaſon and Will to a Condition of Subjection: ſo that put caſe it be the Reaſon of the State, yet not the ſame which firſt gave this Government its being; for then it was the Reaſon of a State, yet free and to uſe their Reaſon and Judgment in ordaining a Government: but now the Reaſon of a State bound by Oath to a Government, and not at liberty to reſolve again: or to aſſume a Supreme Power of judging, diſtructive to the Frame of Government they have eſtabliſhed, and reſtrained themſelves unto. Their Reaſon is ours, ſo far as they are an ordained Repreſentative body: But I have before demonſtrated, that in this Frame, the Houſes could not be ordained a legal Tribunal to paſs Judgment in the laſt caſe: for then the Architects by giving them that Judicature, had ſubordinated the King to them, and ſo had conſtituted no Monarchy. 2. He argues, the Parliament being the Court of Supreme Judicature and the King's great and higheſt Councel, therefore that is not to be denied to it, which inferiour Courts ordinarily have power to do, *viz.* To judge matters of Right between the King and Subject, yea, in the higheſt Caſe of all: The King's power to tax the Subject in Caſe of Danger, and his being ſole Judge of that Danger, was brought to Cognizance, and paſſed by the Judges in the Exchequer. I Anſwer, 1. There is not the ſame Reaſon betwixt the Parliament & other Courts. In theſe the King is Judge, the Judges being deputed by him, and judging by his Authority; ſo that if any of his Rights be tried before them, it is his own Judgment, and he judges himſelf; and therefore it is fit he ſhould be bound by

by his own ſentence: But in *Parliament* the King and people are Judges, and that not by an Authority derived from him, but originally inveſted in themſelves. So that when the two Eſtates judge without him in any caſe not prejudged by him, it cannot be called his Judgment, (as that of the other Courts, being done by his authority) and if he be bound by any Judgment of the two Eſtates without him, he is bound by an external power which is not his own; that is, he is ſubordinated to another power in the State where he is ſupream; which is contradictory. Secondly, in other Courts, if any caſe of right be judged twixt him and the Subject, they are caſes of particular Rights which diminiſh not Royalty, if determined againſt him. Or if they paſs caſes of general right, (as they did in that of Ship-money) it is but declaratively to ſhew what is by Law due to one and the other: yet their Judgment is revocable, and liable to a repeal by a ſuperiour Court, as that was by *Parliament*. But if the Kings *Prerogatives* ſhould be ſubjected to the Judgment of the two Eſtates, the King diſſenting, then he ſhould be ſubject to a ſentence in the higheſt Court, and ſo irremediable; a Judicatory ſhould be ſet up to determine of his higheſt Rights without him, from which he could have no Remedy. Thus main cauſes may be alledged, why, though other Courts do judge his Rights, yet the two Eſtates in *Parliament* (without him) cannot: and it is from no defect in their power, but rather from the eminency of it, that they cannot. If one deputed by common conſent of three, doth by the power they have given them, determine Controverſies between thoſe three, it is not for either of them to challenge right to judge thoſe caſes, becauſe one who is inferiour to them, doth it. Indeed if the power of the two Houſes were a deputed power, as the power of other Courts is, this Argument were of good ſtrength: but they being concurrents in a ſupream Court by power originally their own, I conceive it hard to put the power of final Judgment in all Controverſies twixt Him and them excluſively or ſolely into their hands.

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If it be demanded then, how this cauſe can be decided? and which way muſt the people turn in ſuch a contention? I anſwer, If the non-deciſion be tolerable, it muſt remain undecided, whiles the principle of legal deciſion is thus divided, and by that diviſion each ſuſpends the others power. If it be ſuch as is deſtructive, and neceſſitates a determination, this muſt be made evident; and then every perſon muſt aid that part, which in his beſt Reaſon and Judgment ſtands for publick good againſt the deſtructive. And the Laws and Government which he ſtands for and is ſworn to, juſtifies and binds him out in it, yea binds him to it. If any wonder I ſhould juſtifie a power in the two Houſes to reſiſt and command Aid againſt any Agents of deſtructive commands of the King, and yet not allow them power of judging when thoſe Agents or commands are deſtructive. I anſwer, I do not ſimply deny them power of judging and declaring this; but I deny them to be a legal Court ordained to judge of this caſe authoritatively, ſo as to bind all people to receive and reſt in their judgment for Conſcience of its authority, and becauſe they have voted it: 'Tis the evidence, not the power of their Votes, muſt bind our Reaſon and Practice in this caſe: We ought to conceive their Votes the Diſcoveries made by the beſt eyes of the Kingdom, and which in likelihood ſhould ſee moſt: But when they vote a thing againſt the proceedings of the third and ſupream Eſtate, our Conſciences muſt have evidence of Truth to guide them, and not the ſole authority of Votes; and that for the reaſon ſo oft alledged.

Sect. 3. *What to be done in ſuch a Contention.*

F I N I S.